1 Fearne - 5. 150 [illegible]

1 Saunders on Uses, p. [illegible]

Decree

1 Saunders on Uses - 135

SUPREME COURT OF THE UNITED STATES.

No. ~~229.~~ 129 140

JOHN DEN, ON THE DEMISE OF ROBERT M. CROXALL, PLAINTIFF IN ERROR,

Robert M Croxall

vs.

JOHN M. SHERRERD.

born 29 March

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

GOVERNMENT PRINTING OFFICE.

1 Peters 277 - 374, 345.

6 Cruise's Dyer, chap. 23. Sec 4 —

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Assignment of errors	7	2
Proceedings	9	3
Judgment	73	36
Clerk's certificate	74	37

1 UNITED STATES OF AMERICA, *District of New Jersey, ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States of America, third circuit, in and for the district of New Jersey, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the circuit court of the United States, third circuit, in and for the district of New Jersey, before you, between John Den, on the demise of Robert M. Croxall, plaintiff, and John M. Sherrerd, defendant, of a plea of trespass and ejectment, as it is said, a manifest error hath happened to the great damage of the said John Den, lessee of Robert M. Croxall, as by his complaint appears, we being willing that the error, if any hath been, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then, without delay, you distinctly and openly send under your seal the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, in the District of Columbia, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, at Washington aforesaid, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth.

ANDREW DUTCHER, *Clerk.*

STEPHEN B. RANSOM, *Attorney.*

2 The record and proceedings whereof mention is within made, together with all things touching and concerning the same, I certify to the Supreme Court of the United States, annexed to this writ, as within I am commanded.

R. S. FIELD, *District Judge.*

I have allowed the within writ of error in this cause.
November 9th, A. D. 1864.

R. S. FIELD, *District Judge.*

3 The President of the United States of America to John M. Sherrerd:

Whereas a writ of error has lately been brought by the plaintiff in a certain action of ejectment in the circuit court of the United States of America, third circuit, in and for the district of New Jersey, wherein John Den, on the demise of Robert M. Croxall, is plaintiff, and you, the said John M. Sherrard, are the defendant, to remove into the Supreme Court of the United States the judgment lately rendered in the said circuit court of the United States for the district of New Jersey, in said cause, in favor of you, the said John M. Sherrerd, against the said John Den, on the demise of Robert M. Croxall, and the security required by law has been filed by the said plaintiff: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, in the District of Columbia, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Trenton, in the district of New Jersey, in the third circuit, the ninth day of November, in the year of our Lord one thousand eight hundred and sixty-four.

R. S. FIELD, *District Judge.*

4 UNITED STATES OF AMERICA, *District of New Jersey, ss:*

Abraham R. Harris, of full age, being duly sworn, on his oath saith that he is a deputy marshall of the State of New Jersey; that he did, on the ninth day of November, A. D. 1864, serve the original citation, of which the within is a true copy, on the within-named John M. Sherrerd, by making known to him, the said John M. Sherrerd, the contents thereof and leaving with him a copy.

AB'M R. HARRIS, *U. S. Dep. Marshal.*

Sworn and subscribed before me this 14th day of November, A. D. 1864.

ANDREW DUTCHER, *Clk.*

Filed Nov. 14, 1864.

ANDREW DUTCHER, *Clk.*

5 DISTRICT OF NEW JERSEY, *to wit:*

United States circuit court, district of New Jersey.

JOHN DEN, *ex dem.* ROBERT M. CROXALL,
vs.
JOHN M. SHERRERD. } In trespass and ejectment.

Stephen B. Ransom, of full age, being duly sworn, on his oath saith that he did, on the ninth day of November, A. D. 1864, serve a copy of the writ of error brought by the plaintiff in the above-stated cause to remove the judgment rendered therein against the said plaintiff into the Supreme Court of the United States, and also a copy of the errors assigned in said cause, on the said John M. Sherrerd, the defendant in error, by leaving said copies with the clerk of the said circuit court for the said John M. Sherrerd pursuant to the statute of the United States in such case made and provided.

S. B. RANSOM.

Sworn and subscribed this ninth day of November, A. D. 1864, before me.

ANDREW DUTCHER, *Clk.*

6 Filed Nov. 9, 1864.

A. DUTCHER, *Clk.*

7 *Assignment of errors.*

In the Supreme Court of the United States of America.

JOHN DEN, *ex dem.* ROBERT M. CROXALL, pl'ff in error,
vs.
JOHN M. SHERRERD, def't in error.

Afterwards, that is to say, on the tenth day of December, in the year of our Lord one thousand eight hundred and sixty-four, before the justices of the said Supreme Court of the United States, at the city of Washington, in the District of Columbia, comes the said John Den, lessee of the said Robert M. Croxall, by Stephen B. Ransom, his attorney, and says that in the record and proceeding aforesaid and in giving the judgment aforesaid there is manifest error in this, to wit, that the judgment aforesaid by the record aforesaid appears to have been given for the said John M. Sherrerd against the said John Den, lessee of the said Robert M. Croxall, whereas by the law of the land the said judgment ought to have been given for the said John Den, lessee of the said Robert M. Croxall, against the said John M. Sherrerd; and

the said John Den, lessee of the said Robert M. Croxall, prays that the judgment aforesaid for the error aforesaid and for other errors in the said record and proceedings being may be reversed, annulled, and altogether holden for nought, and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

STEPHEN B. RANSOM,
Attorney for and of Counsel with the Plaintiff in Error.

8 Filed Nov. 9, 1864.

A. DUTCHER, *Cl'k.*

9 Pleas before the circuit court of the United States, in the third circuit and district of New Jersey, in the term of September, eighteen hundred and sixty-four.

Hon. Robert C. Grier, circuit judge; Hon. Richard S. Field, district judge; Andrew Dutcher, cl'k.

United States circuit court, third circuit, in and for the district of New Jersey, of the term of March, in the year of our Lord one thousand eight hundred and sixty-three.

DISTRICT OF NEW JERSEY, *Warren County, ss:*

John Den complains of Richard Fen, in the custody of the marshal of the district of New Jersey, for this, to wit, that whereas Robert Morris Croxall, a citizen and resident of the State of Maryland, on the second day of January, in the year of our Lord one thousand eight hundred and sixty-two, at the town of Belvidere, in the county of Warren, in the district aforesaid, had demised, let, and to farm let to the aforesaid John Den fifty messuages, fifty tenements, fifty barns, fifty orchards, fifty gardens, five hundred acres of land covered with water; five hundred acres of arable land, five hundred acres of pasture land, five hundred acres of meadow
10 land, and five hundred acres of wood land, with their appurtenances, situate, lying, and being in the town of Belvidere, in the district and in the county aforesaid, now or late in the tenure or occupation of John M. Sherrerd, a citizen and resident of the State of New Jersey, to have and to hold the tenements aforesaid, with the appurtenances, unto the said John Den, and his assigns, from the first day of January then last past for, during, and until the full end and term of twenty years thence next ensuing and fully to be completed and ended; by virtue of which demise the said John Den entered into the tenements aforesaid, with the appurtenances, and was thereof possessed until the said Richard Fen, on the third day of January, in the year last aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to the said John Den against the peace of the United States of America, and to the damage of the said John Den five hundred dollars. And thereof he brings suit, &c.

11 JOHN DOE,
RICHARD ROE, *Pledges, &c.*

S. B. RANSOM, *Att'y for the Plaintiff.*

DISTRICT OF NEW JERSEY, *Warren County, ss:*

John Den puts in his place Stephen B. Ransom, his attorney, against Richard Fen, in a plea of trespass and ejectment.

SIR: I am informed you are in possession of, or claim title to, the premises in the above declaration of ejectment mentioned, or to some part thereof.

And I being sued as a casual ejector, and having no claim or title thereto, do advise you to appear at Trenton, in the district of New Jersey, on the fourth Tuesday in September instant, in the circuit court of the United States, then and there to be held, and by some attorney of the same court, cause yourself to be made defendant in my stead; otherwise, I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

Dated September 4th, 1863.

I am your friend, RICHARD FEN.

To JOHN M. SHERRERD, Esq.,

Tenant in possession of the premises in this declaration mentioned, or of some part thereof.

12 DISTRICT OF NEW JERSEY, *Hudson County, ss:*

Charles W. Benjamin, deputy marshal of the State of New Jersey, saith that he did, on the eighth day of September instant, deliver to John M. Sherrerd, the tenant in possession of the premises in the declaration hereunto annexed mentioned or some part thereof, a true copy of the said declaration and of the notice thereunder written, and did, at the same time, inform the said John M. Sherrerd that it was a declaration in ejectment, and that unless the said John M. Sherrerd did appear in the circuit court of the United States, at Trenton, in and for the district of New Jersey, on the twenty-second day of September instant, by some attorney of the said court, and cause himself, by rule of the said court, to be made defendant in the room of the casual ejector, Richard Fen, judgment would be entered against the said casual ejector by default, and he, the said John M. Sherrerd, would thereupon be turned out of possession, or words to that effect.

C. W. BENJAMIN.

Sworn and subscribed this twelfth day of September, in the year of our Lord 1863, before me.

JOHN P. VROOM, *U. S. Commissioner for New Jersey.*

13 In the circuit court of the United States for the third circuit and district of New Jersey, of the fourth Tuesday of September, eighteen hundred and sixty-three.

JOHN DEN, ON THE DEMISE OF ROBERT MORRIS CROXALL, *vs.* RICHARD FEN, JOHN M. SHERRERD, TENANT IN POSSESSION. } In ejectment for land in the district of New Jersey.

It is ordered, by the consent of the attorneys of both parties, that John M. Sherrerd be made defendant in the place and stead of the now defendant, Richard Fen, and do forthwith appear at the suit of the plaintiff, and receive a declaration in an action of trespass and ejectment for the lands and premises in question, which said lands and premises the said defendant hereby admits to be or consist of one lot of land, farm and premises, with the appurtenances, consisting of two acres, situate in the town of Belvidere, in the county of Warren, and now in the possession and occupation of John M. Sherrard, for which he intends, as owner thereof, to defend this action of trespass and ejectment.

And it is further ordered, by the like consent, that the said defendant do forthwith plead thereto not guilty, and upon the trial of the issue confess lease, entry, and ouster, and that the said defendant was at the time of the service of the said declaration in possession of the premises herein-

14 before mentioned and specified, and insist upon the title only; otherwise, let judgment be entered for the plaintiff against the now defendant, Richard Fen, by default. And if upon the trial of the said issue the said defendant shall not confess lease, entry, and ouster, and such possession as aforesaid, whereby the plaintiff shall not be able further to prosecute his suit

herein against the said defendant, then no cost shall be allowed for not further prosecuting the same, but the said defendant shall pay costs to the plaintiff in that case to be taxed.

And it is further ordered that if upon the trial of the said issue a verdict shall be given for the said defendant, or if it shall happen that the plaintiff shall not further prosecute his said suit for any other cause than for not confessing lease, entry, and ouster, and such possession as aforesaid, then the lessor of the plaintiff shall pay to the said defendant his costs in that case to be adjudged.

S. B. RANSOM, *Att'y for the Plaintiff.*
P. D. VROOM, *Att'y for the Defendant.*

United States circuit court, third circuit, in and for the district of New Jersey, of the term of September, in the year of our Lord eighteen hundred and sixty-three.

DISTRICT OF NEW JERSEY, *Warren County, ss:*

15 John Den complains of John M. Sherrerd, a citizen and resident of the State of New Jersey, in the custody of the marshal of the district of New Jersey, for this, to wit, that whereas Robert Morris Croxall, a citizen and resident of the State of Maryland, on the second day of January, in the year of our Lord one thousand eight hundred and sixty-two, at the town of Belvidere, in the county of Warren, in the district aforesaid, had demised, let, and to farm let to the aforesaid John Den fifty messuages, fifty tenements, fifty barns, fifty orchards, fifty gardens, five hundred acres of land covered with water, five hundred acres of arable land, five hundred acres of pasture land, five hundred acres of meadow land, and five hundred acres of wood land, with their appurtenances, situate, lying, and being in the town of Belvidere, in the district and in the county aforesaid, now or late in the tenure or occupation of the said John M. Sherrerd, a citizen and resident of the State of New Jersey, to have and to hold the tenements aforesaid, with the appurtenances, unto the said John Den, and his assigns, from the first day of January then last past for, during, and until the full end and term of twenty years thence next ensuing and fully to be completed and ended, by virtue of which demise the said John Den entered into the tenements aforesaid, with the appur-
16 tenances, and was thereof possessed until the said John M. Sherrerd, on the third day of January, in the year last aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out and still keeps out the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to the said John Den, against the peace of the United States of America, and to the damage of the said John Den five hundred dollars. And therefore he brings suit, &c.

JOHN DOE,
RICHARD ROE, *Pledges, &c.*

S. B. RANSOM, *Att'y for the Plaintiff.*

DISTRICT OF NEW JERSEY, *Warren County, ss:*

John Den puts in his place Stephen B. Ransom, his attorney, against John M. Sherrerd, in a plea of trespass and ejectment.

17 DISTRICT OF NEW JERSEY, *to wit:*

John M. Sherrerd puts in his place Peter D. Vroom, his attorney, at the suit of John Den, in a plea of trespass and ejectment.

And the said John M. Sherrard, by Peter D. Vroom, his attorney, comes and defends the force and injury, when, &c., and says that he is not guilty

of the trespass and ejectment above laid to his charge in manner and form as the said John Den hath above thereof complained against him. And of this the said defendant puts himself upon the country. And the said John Den doth so likewise.

P. D. VROOM, *Att'y of the Defendant.*

Therefore the marshal is commanded that he cause to come here on Tuesday, the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and sixty-four, twelve, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. The same day is given to the parties aforesaid, &c., whereupon.

18 This cause came on to be tried before his honor Robert C. Grier, an associate justice of the Supreme Court of the United States, at a circuit court of the United States, held at Trenton, in and for the district of New Jersey, on the fourth Tuesday of September, in the year 1864, and a jury being summoned and sworn to try the same, and having heard the evidence in the cause, upon their oaths do say that they do find as follows, that is to say:

That on the 15th day of November, A. D. 1793, Robert Morris was seized in fee simple of two certain tracts of land, containing upwards of 600 acres, situate in the county of Sussex, (now Warren,) upon which a large portion of the town of Belvidere now stands, of which the premises in question in this suit were a part, and being so seized on the same day and year aforesaid, an indenture tripartite was made by and between the said Robert Morris of the first part, one Charles Croxall, of the county of Sussex, in the State of New Jersey, and Mary, his wife, of the second part, and one Robert Morris, junior, Adam Hoops, and Aaron Dickinson Woodruff of the third part; one part of which indenture, duly executed under the hand and seal of the said Robert Morris, was in the words following, that is to say:

This indenture tripartite, made this fifteenth day of November, in the year of our Lord one thousand seven hundred and ninety-three, between

19 Robert Morris, of the city of Philadelphia, esq., of the first part, and Charles Croxall, of the county of Sussex, State of New Jersey, and Mary, his wife, of the second part, and Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff of the third part, witnesseth, that for the better settling and assuring the messuages, lands, tenements, and hereditaments hereinafter mentioned, and intended to be conveyed and settled to the uses upon, under, and subject to the trusts, and to and for such intents and purposes as hereinafter are limited, declared, and expressed of and concerning the same, and for and in consideration of the sum of ten shillings to the said Robert Morris paid by the said Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and thereof, and from every part thereof, the said Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff, their executors and administrators, are forever discharged, he, the said Robert Morris, party of the first part to these presents, hath granted, bargained, sold, remised, released, ratified, and confirmed, and by these presents doth grant, bargain, sell, remise, release, ratify, and confirm, unto the said Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff, and to their heirs all and singular those two tracts of land situate, lying, and being in the county of Sussex aforesaid.

The first whereof, called the Belvidere farm, in the township of Oxford, is butted and bounded and described as follows; that is to say, beginning at a buttonwood bush on the bank of the River Delaware, thence north forty-seven degrees east, eighteen chains, to a white-oak stump and stake; thence south fifteen degrees and thirty minutes east, seventeen chains and seventy-five links, by lands of George Coltman, esq., to a white-oak stump; thence

north eighty-five degrees east, seventeen chains, also by lands of said Coltman, to a large stone; thence south sixteen degrees and thirty minutes east, two chains and fifty links, to a stone on the bank of Paquest; thence up the Paquest on the several courses thereof, also by land of said Coltman, to a stone on the bank of the said Paquest, near a large black-oak tree;
20 thence north five degrees east, eighty-three chains and fifty links, partly by land of said Coltman and Jacob Wyckoff, to a large chesnut tree on the banks of the River Delaware; thence south fifty-four degrees east, sixty-seven chains, by lands of William Hann and Rynear Van Sickle, to a dogwood stump on the southeast side of Paquest; thence down the Paquest on the several courses thereof, by lands of Matthew Appleman and Joseph Makey, to a stake on the great road; thence partly along the great road north forty-five degrees thirty minutes west, sixty-one chains fifty links, by lands of Matthew Lowry, to a corner on the Delaware at the mouth of said Paquest; thence up the Delaware, the course thereof, to the place of beginning; containing four hundred and sixty-four and one half acres and thirty-seven perches, more or less.

The second whereof, being all that other tract of land situate, lying, and being in Knowlton township and county aforesaid, near the Pequeola Mountain, and which is butted and bounded as follows, beginning at a black-oak tree and runs from thence south sixty degrees east, ten chains, to a chesnut oak for a corner; thence south fifty degrees west, eighty chains, to a pine tree for a corner; thence north thirty degrees west, thirty chains, to a heap of stones for a corner; thence north sixty-seven degrees east, seventy-six chains, to place of beginning; containing one hundred and fifty acres of land, besides the usual allowance of highways, be the same more or less. Together with all and singular the houses, out-houses, buildings, and improvements, orchards, trees, woods, underwood, rivers, streams, water, water-courses, quarries, mines, minerals, huntings, fishings, commodities, advantages, emoluments, hereditaments, and appurtenances to the same belonging or in anywise appertaining or accepted, reputed, deemed, used, or taken as parcel, part, or member thereof, with the reversion and reversions, remainder and remainders, rents, issues, and profits of all and singular the said granted tracts of land and premises, and all the estate, right, title, interest, property, claim, and demand of the said party of the first part of, in, and unto the said premises, and of, in, and unto every part and parcel thereof. To have and to hold the said messuage, lands, tenements, hereditaments, and
21 premises, with the appurtenances, and every part and parcel thereof, to the said Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff, their heirs and assigns, to the uses, trusts, intents, and purposes hereinafter mentioned, limited, expressed, and declared of and concerning the same; that is to say, to the use and behoof of the said Charles Croxall and his assigns for and during the term of his natural life, and from and immediately after the decease of the said Charles Croxall, to the use and behoof of the said Mary, his wife, and her assigns, for and during the term of her natural life, in case she shall happen to survive the said Charles Croxall; and from and after the determination of the said estates so limited to them, the said Charles Croxall and Mary, his wife, for their several and respective lives, to the use and behoof of the said Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff, and their heirs for and during the lives of them, the said Charles Croxall and Mary, his wife, and the life of the longer liver of them, upon trust to preserve the contingent uses and remainders thereof hereinafter limited from being destroyed, and to and for that purpose to make entries as occasion shall require, but not to convert any of the profits of the said premises to their own uses, but nevertheless in trust to permit and suffer the said Charles Croxall and his assigns, during his natural life, and

after his death, the said Mary, his wife, and her assigns, during her natural life, to receive and take the rents, issues, and profits of all and singular the said premises, with the appurtenances, to and for their respective uses and benefits, and from and immediately after the death of the survivor of them, the said Charles Croxall and Mary, his wife, then to the use and behoof of the heirs of the body of the said Mary, by her present husband lawfully begotten or to be begotten, and to the heirs of his, her, and their bodies lawfully to be begotten; and in default of such issue, then to the use and behoof of the said Robert Morris, party of the first part to these presents, and of his heirs and assigns forever, and to, or for, or upon no other use, trust, intent, or purpose whatsoever.

In witness whereof, the said party of the first part to these presents hath hereunto interchangeably set his hand and seal the day and year first above written.

(Signed) ROBERT MORRIS. [L. S.]

22 Sealed and delivered in the presence of—
JAMES F. ARMSTRONG.
MICHAEL ROBERTS.

That by virtue of the said indenture, the said Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff thereupon became seized of the said two tracts of land first above mentioned, being the same tracts described in the said deed for the estate, and upon the trusts and limitations in the said deed contained, as above set forth; and that from and after the making of the said indenture, the said Charles Croxall, together with his said wife, and their assigns, did occupy and possess the said tracts of land and premises, and did receive and enjoy the profits thereof until the same were divided amongst the children of the said Charles and Mary, as hereinafter mentioned; and that the said Charles Croxall, prior to the year 1817, erected a mansion house on that part of the said premises which are now in dispute.

That the said Mary, wife of the said Charles Croxall, was a daughter of the said Robert Morris, and was lawfully married to the said Charles long prior to the making of the said indenture, and had by him, as well before as after the said indenture, several lawful children, all of whom died without issue and unmarried during the lifetime of the said Charles and Mary, and prior to the year 1817, except the four following, that is to say: Thomas Croxall, Daniel C. Croxall, Anna Maria Croxall, (who intermarried with one Claudius F. Le Grand,) and Morris Croxall, who severally survived the said Charles and Mary, the said Thomas being the eldest of said survivors and having been born prior to the execution of said deed; and that the said Mary Croxall departed this life on the sixth day of July, in the year 1824, and the said Charles Croxall also departed this life on the sixth day of November, in the year 1831.

That the said Thomas Croxall, in or about the year 1813, was married to one Mary Long, and had by her, in lawful matrimony, nine children, three of whom died without issue during the lifetime of the said Thomas, and the remaining six of whom, namely, Maria F. Jones, Rachel Ann Johnson,
23 Robert M. Croxall, (the lessor of the plaintiff,) Elizabeth M. Croxall, Eleanor M. Croxall, and Mary Josephine Dickey, survived the said Thomas and are now living, the said Robert M. Croxall, (the lessor of the plaintiff,) being his only surviving son, and being born the 29th of March, in the year 1821, and being a citizen of the State of Maryland at the commencement of this suit, and that the said Thomas departed this life on the 21st day of October, in the year 1861.

That on the 26th day of June, 1798, the said Charles Croxall and Mary, his wife, by a deed of bargain and sale bearing date on that day, between them

on the first part and James Gallahan and William Gallahan of the second part, for the consideration of five shillings, did convey the said two tracts of land to the said James Gallahan and William Gallahan, to have and to hold the same unto them, and their heirs and assigns, for and during the natural life of the said Charles Croxall, and from and immediately after the death of the said Charles Croxall, during the natural life of the said Mary, his wife, in case she should happen to survive the said Charles Croxall, to the sole and only proper use, benefit, and behoof of the said James Gallahan and William Gallahan, their heirs and assigns, which said conveyance was subject to the following declaration of trust, made in writing, and bearing date on the same 26th day of June, 1798, reciting that whereas the said conveyance was made to enable the said James Gallahan and William Gallahan, out of the rents, issues, and profits and proceeds of the said two tracts of land, to satisfy and pay certain debts due from the said Charles Croxall, the principal of which was a debt due to Messrs. Hartshorne, Large & Co., and also to enable the said Mary, wife of the said Charles, to receive of and from the said James Gallahan and William Gallahan any sum, not exceeding four hundred dollars per year, to be paid quarterly, and under an agreement that as soon as said debts should be satisfied and a reasonable compensation made to the said James Gallahan and William Gallahan for their expenditures and trouble in the agency of the said business, that then they would reconvey the said two tracts of land and premises, or such right therein as they held by virtue of the said conveyance, to the said Mary Croxall, her heirs and assigns. It was thereby witnessed, covenanted, and agreed that they, the said James Gallahan and William Gallahan, as soon as might be necessary after the execution of the said declaration of trust, should open an account between the said parties, and would duly, regularly, and from time to time charge themselves with such sum and sums of money as should arise from the said two tracts and every part thereof, and would use, rent, let, or lease the same in such a manner as to them appear most beneficial and to the best advantage of the said Charles Croxall and Mary, his wife. And it was further covenanted and agreed that the said James Gallahan and William Gallahan should have credit for all moneys paid in the discharge of the before recited debts, for all moneys paid to the said Mary Croxall or to her order, (not exceeding the before-mentioned sum,) for all moneys expended in necessary repairs of the premises, and also for such sums as should be deemed and considered a reasonable compensation for their services and trouble in the agency aforesaid; and that they might effect an insurance on the lives of the said Charles Croxall and Mary, his wife, for any sum not exceeding two thousand pounds, and should have an allowance for the necessary expense thereof. And the said James Gallahan and William Gallahan did further covenant, promise, grant, and agree to and with the said Charles Croxall and Mary, his wife, that neither they, the said James and William, nor either of them, would sell, convey, and assure the said premises to any other person or persons except the said Mary Croxall, and that they, or the survivor of them, would, as soon as the rents, issues, profits, and proceeds should enable them to satisfy the demand to be discharged as aforesaid, make such proper, lawful, and sufficient conveyance or assurance as might be necessary in the law to reconvey the said premises, or such right therein as they hold, to the said Mary, wife of the said Charles Croxall, her heirs and assigns.

That on the 11th day of July, in the year 1804, the said James and William Gallahan, by a deed of bargain and sale, for and in consideration of the release and discharge of the aforesaid annuity of four hundred dollars, pay-

able under the aforesaid declaration of trust and agreement, and the
25 further consideration of one dollar, did grant, bargain, and sell, and enfeoff, convey, and confirm unto the said Mary Croxall the whole of the said premises so conveyed to them as aforesaid, excepting certain parcels thereof, (which exceptions do not include the premises in question in this suit,) to have and to hold to the said Mary Croxall, to the sole and proper use and behoof of the said Mary Croxall for and during her natural life. And afterwards, on the first day of December, 1807, by a final decree of the court of errors and appeals of the State of New Jersey, on an appeal from a final decree in the court of chancery of the State of New Jersey, in a certain suit therein instituted by the said Charles Croxall and Mary, his wife, against the said James Gallahan and William Gallahan, for an account and a reconveyance of the residue of the said lands and premises, and the residue of the estate therein, under and by virtue of the said declaration of trust, it was by the said court of errors and appeals, by their said final decree, bearing date on the said first day of December, 1807, ordered, adjudged, and decreed in in words following:

Court of appeals, December 1st, 1807.

JAMES GALLAHAN AND WILLIAM GALLAHAN, appellants, *and.* CHARLES CROXALL AND MARY, HIS WIFE, respondents. } On petition and appeal, &c.

Upon hearing counsel on the petition and appeal of the appellants, fro the reports, orders, interlocutory decree, and final decree complained of, it ordered and adjudged that the said appellants have an allowance of the su
of twelve hundred and sixty-three dollars and eighty-two cents,
26 addition to the credits given in the reports and decrees made, and that the sum of seven hundred and forty-six dollars, part of the said sum of twelve hundred and sixty-three dollars and eighty-two cents, shall be paid on the eighth day of January next, by the said Charles Croxall to the said James Gallahan and William Gallahan, or security given to be approved of by the chancellor, for the payment thereof on the eighth day of January, which will be in the year eighteen hundred and nine, with interest from the eighth day of January next; and upon the payment or security for the payment as aforesaid of the said seven hundred and forty-six dollars, the said James Gallahan and William Gallahan, on the eighth day of January next, shall surrender and deliver unto the said Charles Croxall and Mary, his wife, her heirs and assigns, the grist-mill, dwelling-house, and every other part of the estates of the said Mary Croxall, called the Belvidere estate, with the appurtenances thereunto belonging or in anywise appertaining, and which was committed by the said respondents to the said appellants; and the said appellants shall make and deliver such proper and sufficient conveyance and assurance as may be necessary in law to convey the said premises or such rights therein as they, the said appellants, hold to the said Mary Croxall, wife of the said Charles Croxall, her heirs and assigns, pursuant to the articles of agreement made and entered into between the appellants and respondents on the twenty-sixth day of June, seventeen hundred and ninety-eight. And in default of payment or approved security for the payment as aforesaid of the said seven hundred and forty-six dollars, then the said appellants shall and may continue in possession of the grist-mill and premises until the twenty-fifth day of March, which will be in the year eighteen hundred and nine, keeping the said grist-mill and premises in as good repair as at this present time, unavoidable accidents excepted, and shall, on the said twenty-fifth day of March, eighteen hundred and nine, surrender and deliver unto the said respondents the said estate, and shall recon-

vey the same to the said Mary Croxall, her heirs and assigns, as above directed, pursuant to the said articles of agreement of the twenty-sixth day of June, seventeen hundred and ninety-eight. And it is further ordered and adjudged that with the aforesaid additional credit and variations in the decrees complained, all other matters in the said decrees shall be, and the same are hereby, affirmed.

27

Which said land and premises referred to in the said decree includes all the said two tracts of land set out and described in the said deed tripartite, from the said Robert Morris of the first part, and Charles Croxall and Mary, his wife, of the second part, and Robert Morris, jr., Adam Hoops, and Aaron Dickinson Woodruff of the third part, first above referred to and set out.

That the said moneys mentioned in the said decree were duly paid by the said Charles Croxall, and the said premises were duly surrendered and delivered to the said Charles and Mary, and the said James Gallahan and William Gallahan executed and delivered such deed of conveyance as in the said decree was required in the manner therein and thereby directed to be done.

That on the first day of July, in the year eighteen hundred and fourteen, the said Charles Croxall and Mary, his wife, made and executed to the said Thomas Croxall and Daniel C. Croxall a deed of bargain and sale, in the words following, to wit:

"This indenture, made the first day of July, in the year of our Lord eighteen hundred and fourteen, between Charles Croxall, of the county of Sussex and State of New Jersey, and Mary, his wife, of the first part, and Thomas Croxall and Daniel Croxall, of the same county and State, of the second part. Whereas James Hyndshaw, of the township of Greenwich, in the county of Sussex and State of New Jersey, in and by his certain deed of indenture, bearing date the eighteenth day of June, in the year of our Lord seventeen hundred and ninety-eight, did sell and convey unto James Gallaher, of the city of Philad'a, and William Gallaher, of the county of Sussex and State of New Jersey aforesaid, their heirs and assigns, two certain tracts of land, with the appurtenances, situate, lying, and being in the county of Sussex and State of New Jersey aforesaid and which said tracts are thus in the said deed described: The first in the township of Oxford, and called the Belvidere estate, beginning at a corner of lands belonging to Major Robert Hoops, on the bank of the River Delaware; hence bounded by the said river and lands of Matthew Lowrie, Joseph Mackey, junior, John Miller, William Hen, Jacob Wycoff, the aforesaid Robert Hoops, and others, containing by estimation five hundred acres of land; also one other lot of land situate in the county of Sussex, called the White Rocks, and containing one hundred and fifty acres of land; together with all and singular rights, privileges, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said two several tracts of land and plantations, with the rights, privileges, hereditaments, and appurtenances, to the only proper use, benefit, and behoof of the said James Gallaher and William Gallaher, their heirs and assigns, during the natural life of Charles Croxall, from whom the said plantations were sold by James Hyndshaw, esquire, late sheriff of the county of Sussex, and purchased by Peter Smith, esquire, and conveyed by the said Peter Smith unto the said James Hyndshaw, on the sixteenth day of June, seventeen hundred and ninety-eight. And whereas the said James Gallaher and William Gallaher in and by their certain deed of indenture, bearing date the eleventh day of July, in the year of our Lord eighteen hundred and four, did, for and in consideration of a release and discharge of a certain annuity of four hundred dollars, payable under certain articles of agreement by the said

28

James and William Gallaher to the said Mary Croxall, and released and discharged by the said Mary Croxall by deed bearing even date therewith, and also for and in consideration of the sum of one dollar by the said Mary Croxall to the said James and William Gallaher well and truly paid at and before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and thereof do by these presents acquit, exonerate, and forever discharge the said Mary Croxall, did grant, bargain, and sell, enfeoff, convey, and confirm to the said Mary Croxall the following parts or parcels of the estate, in the county of Sussex, called Belvidere, to wit: the new saw mill and lot, with the appurtenances, sawyers' houses and gardens, the tavern house and lot and the farm called the Belvidere farm, (except a small lot between the gardens of William Gallaher and the barn,) the house at the corner of the orchard, the farm called the New Ground Place,
29 and the house and stable and lot occupied by Thomas Hays, and also the farm called the White Rock Place, with their several appurtenances, together with all the right, title, estate, and interest of them, the said James and William Gallaher, of, in, and to and out of the same, to have and to hold the said several tenements above mentioned, with their several appurtenances, to the said Mary Croxall, to the sole proper use and behoof of the said Mary Croxall for and during her natural life. And whereas the said James Gallaher and William Gallaher in and by their certain deed of indenture, bearing date the twenty-third day of January, in the year of our Lord eighteen hundred and eight, did recite and convey as follows: "Whereas by a certain article of agreement, made and concluded on the twenty-sixth day of June, in the year of our Lord one thousand seven hundred and ninety-eight, by and between the above-named James Gallaher and William Gallaher of the first part, and Charles Croxall and Mary, his wife, of the second part, after reciting that conveyances had been made by James Hyndshaw, late sheriff of the county of Sussex, and by them, the said Charles Croxall and Mary, his wife, to the said James Gallaher and William Gallaher, their heirs and assigns, for two certain tracts of land in the said county of Sussex, to have and to hold the same to the said James Gallaher and William Gallaher, their heirs and assigns, for and during the natural life of the said Charles Croxall, and immediately after his decease, during the natural life of the said Mary Croxall, in case she should survive him, and reciting further that the said conveyances had been made to the said James Gallaher and William Gallaher in trust, to enable him to do and perform certain matters and things in the said agreement mentioned, it was in and by the said agreement promised, covenanted, and agreed by the said James Gallaher and William Gallaher to and with the said Charles Croxall and Mary, his wife, that after the performance and fulfillment of the objects of the said trust, that they, the said James Gallaher and William Gallaher, should reconvey the said premises or such rights as they had therein to the said Mary Croxall, her heirs and assigns. And whereas by the final decree of the high court of appeals for the State of New Jersey, made on the first
30 day of December last past, in a certain suit in equity depending before the said court in which the said James Gallaher and William Gallaher were appellants, and the said Charles Croxall and Mary, his wife, respondents, it was, among other things, decreed and adjudged that on the paying or securing to be paid, on the eighth day of January, one thousand eight hundred and nine, by the said respondents to the said appellants the sum of seven hundred and forty-six dollars, the said appellants should make, execute, and deliver unto the said Mary Croxall a sufficient conveyance and assurance in the law necessary to reconvey the said premises which yet remained in the possession of the said appellants, or such right as the appellants hold therein, unto the said Mary Croxall, her heirs and as-

signs, pursuant to the said articles of agreement. And whereas the said respondents have secured to the said appellants payment of the said sum agreeably to the said decree: Now this indenture witnesseth that the said James Gallaher and William Gallaher, as well in performance of the said decree as for and in consideration of the said sum of seven hundred and forty-six dollars, so as aforesaid secured to be paid, have given, granted, bargained, sold, conveyed, released, confirmed, and surrendered, and by these presents do give, grant, bargain, sell, convey, release, confirm, and surrender, unto the said Mary Croxall, wife of the said Charles Croxall, all and singular the residue not heretofore conveyed and surrendered, of the premises, lands, mills, houses, out-houses, with their appurtenances, in the said deed from the said James Hyndshaw and the said Charles Croxall and Mary, his wife, to the said James Gallaher and William Gallaher, and in the said article of agreement before set forth, mentioned, and included, which premises are situate in the said county of Sussex, and are commonly called and known by the Belvidere estate, and all the estate, right, title, interest, and claim, either in law or equity, of them, the said James Gallaher and William Gallaher, or either of them, of, in, and to the same and every part and parcel thereof, to have and to hold the said premises, lands, houses, mills, and out-houses, with all and singular their appurtenances, unto the said Mary Croxall, wife of the said Charles Croxall, her heirs and as-
31 signs, to the only proper benefit and behoof of the said Mary Croxall, her heirs and assigns forever; as by the said deed, reference being thereunto had, more fully at large appear. And whereas in and by the above recited deed of indenture the premises, with all the appurtenances above described, have been duly and legally vested in the said Mary Croxall, and in order that all the right which the said party of the first part have, or might or ought to have, or may hereafter have, may be fully conveyed to and absolutely vested in the said party of the second part, their heirs and assigns: Now this indenture witnesseth that the said party of the first part, for and in consideration of the sum of one thousand dollars to them in hand well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and thereof do by these presents acquit, exonerate, and forever discharge the said party of the second part, their executors and administrators, have granted, bargained, sold, enfeoffed, conveyed, and confirm, and by these presents do grant, bargain, sell, enfeoff, convey, and confirm, to the said party of the second part, their heirs and assigns, the one half of all and singular the said premises, lands, mills, out-houses, with the appurtenances, so as aforesaid sold and conveyed by James Hyndshaw to James Gallaher and William Gallaher, and by them released, conveyed, and surrendered to the said Mary Croxall, all the estate, right, title, interest, and claim, either in law or equity, of them, the said party of the first part, of, in, and to the same and every part and parcel thereof, to have and to hold the said one half of all the premises, lands, houses, mills, and out-houses, with all and singular their appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper benefit and behoof of the said party of the second part, their heirs and assigns forever. And the said party of the first part, for themselves, their executors and administrators, do covenant to and with the said party of the second part, their heirs and assigns, that they have done nothing whereby the estate in the said premises is encumbered, and that they will warrant and defend the same to the said party of the second part, their heirs and assigns, against the lawful claims or de-
32 mands of all persons claiming by, through, or under them, or either of them. And further, that they, the said party of the first part, at the request, cost, and charges of the said party of the second part, their

executors, administrators, or assigns, shall and will, from time to time, and at all times hereafter, make, do, and execute all and every such further other acts, deeds, assignments, conveyances, and assurances in the law for the further and better conveying, assigning, and assuring the one half of all and singular the premises hereinbefore mentioned or intended to be conveyed, assigned, and assured to and for the uses, interests, and purposes hereinbefore expressed, as by their or any of their counsel learned in the law shall be reasonably advised or required.

In witness whereof, the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

(Signed) CHARLES CROXALL. [L. S.]
MARY CROXALL. [L. S.]

Recorded August 18, 1814.

That on or about the ninth day of May, in the year 1808, all the right, title, interest, and estate of the said Charles Croxall in and to the said tracts of land and premises were sold by the sheriff of the county of Sussex aforesaid, under and by virtue of sundry writs of fieri facias, issued upon and for the satisfaction of certain judgments theretofore, to wit, in the months of September and November, in the year 1807, recovered against said Charles in the supreme court of the State of New Jersey, and one William McCullough became the purchaser of said Charles's said right, title, interest, and estate, at such sheriff's sale; and the said sheriff thereupon executed and delivered to the said William a deed of conveyance for the said right, title, interest, and estate, to have and to hold the same to the said William, his heirs and assigns, to his and their only proper use and behoof; which deed of conveyance was in due form of law, and bore date the said ninth day of May, in the year 1808. And afterwards, on or about the 17th day of May, in the year 1808, the said William McCullough, together
33 with his wife, by a certain deed of conveyance executed in due form of law, and bearing date the day and year last aforesaid, bargained, sold, and conveyed the said tracts of land and premises to one George H. Milnor, his heirs and assigns. And afterwards, on or about the 18th day of May, in the year 1808, the said George H. Milnor executed a certain deed of conveyance in due form of law, bearing date the day and year last aforesaid, for the said lands to Aaron Dickinson Woodruff, Peter Gordon, and Jonathan Rhea, (except certain lots reserved by him, the said Milnor, hereinafter mentioned, said exceptions not including the premises in question in this cause,) which deed is in the words following, that is to say:

This indenture, made the eighteenth day of May, in the year of our Lord one thousand eight hundred and eight, between George H. Milnor, of Trenton, in the county of Hunterdon and State of New Jersey, of the one part, and Aaron Dickerson Woodruff, Peter Gordon, and Jonathan Rhea, of Trenton aforesaid, of the other part, witnesseth, that the said George H. Milnor, for divers good causes and considerations him thereunto moving, particularly for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof he doth acknowledge, and himself therewith fully satisfied, contented, and paid, hath given, granted, bargained, sold, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, enfeoff, convey, and confirm, unto the said Aaron D. Woodruff, Peter Gordon and Jonathan Rhea, in trust, however, and to and for the uses hereinafter mentioned and limited, all those two tracts of land which the said George H. Milnor this day purchased from Wm. McCullough, of the county of Sussex, in the State aforesaid, and for which Charles Croxall and Mary, his wife, have this day signed a release to

the said Geo. H. Milnor, situate, lying, and being in the county of Sussex aforesaid. The first whereof, called Belvidere farm, in the township of Oxford, is butted and bounded and described as follows: Beginning at a buttonwood bush on the bank of the River Delaware; thence north forty-seven degrees east, eighteen chains, to a white-oak stump and stake; thence south fifteen degrees and thirty minutes east, seventeen chains and seventy-five
34 links, by lands late of George Cottam, deceased, to a white-oak stump; thence north eighty-five degrees east, seventeen chains, also by lands late of the said Cottam, to a large stone; thence south sixteen degrees thirty minutes east, two chains and fifty links, to a stone in the bank of the Pequest; thence up the Pequest on the several courses thereof, also by lands of the said Cottam, to a stone on the bank of the said Pequest, near a large black-oak tree; thence north five degrees east, eighty-three chains and fifty links, partly by lands of the said Cottnam and Jacob Wyckoff, to a large chesnut tree in the River Delaware; thence south fifty-four degrees east, sixty-seven chains, by land of Wm. Han and Renier Vansickle, to a dogwood stump in the southeast side of the Pequest; thence down the Pequest on the several courses thereof, by lands now or late of Matthew Appleman, to an oak tree on the bank of the said creek; thence south five degrees west, forty-seven chains, by lands of said Matthew Appleman and Joseph Mackey, to a stake on the great road; thence along the great road north forty-five degrees thirty minutes west, sixty-one chains fifty links, by land now or late of Matthew Lowry, to a corner on the Delaware at the mouth of the said Pequest; thence up the said Delaware the courses thereof to the place of beginning; containing four hundred and sixty-four acres and one-half and thirty-seven perches of land, more or less; also a lot of land, called the Deep Hole lot, on the east side of the Pequest, adjoining lands of Jeremiah Mackey, containing one acre, more or less. The second tract is situated in the township of Knowlton, in the said county of Sussex, near the Pequest Mountain, and is butted and bounded as follows: Beginning at a black-oak tree and runs thence south sixty degrees east, ten chains, to a chesnut oak for a corner; thence south fifty degrees west, eighty chains, to a pine tree for a corner; thence north thirty-three degrees west, thirty chains, to a heap of stones for a corner; thence north sixty-seven degrees east, seventy-six chains, to the place of beginning; containing one hundred and fifty acres of land, besides the usual allowance for roads, be the same more or less. Together with all and singular the buildings, improvements, and appurtenances thereunto belonging, and
35 all the estate, right, title, interest, property, claim and demand of him, the said George H. Milnor, of, in, and to the same, excepting, however, out of the Belvidere tract the following lots, buildings, and privileges, that is to say, first, the grist mill and lot whereon it stands, bounded on the north by Pequest creek; 2d, the storehouse for merchandize, with a lot of grass ground behind the same now inclosed, supposed to contain about two acres, including the cooper shop; 3d, the saw mills and saw houses, at the river with the two sawyers' houses and gardens; 4th, the dwelling house, formerly occupied by William Gallagher, with the garden belonging to it, as the pales now stands, with the out-houses in the said garden, and the stable attached to the said house; 5th, the house joining the garden, called the Corner House, and the old tavern and garden belonging to it, as the same now runs till it strikes the Pequest dam; 6th, the Point House lot, supposed to contain eighteen or twenty acres, the line to run as the road now runs on the north side of the creek to the end of the grist mill dam; 7th, two acres of ground to be laid off on the south side of the road leading from the grist mill to the saw mill, in the most suitable part for a board yard; 8th, the liberty of cutting and hauling wood and timber from the wood land on the farm, for firewood for the use of his family, and for the necessary repairs of the

buildings and fences on the part herein reserved, all which excepted premises and privileges are not included in or to be effected by this present grant.

To have and to hold all and singular the above-described tract of land and premises, except as hereinbefore excepted, to the said Aaron D. Woodruff, Peter Gordon, and Jonathan Rhae, and to their heirs and assigns, for and during the natural lives of the said Charles Croxall and Mary, his wife, in trust, however, and to and for the uses and purposes following, that is to say, in trust for the sole and separate use of the said Mary Croxall for and during her natural life, and in trust also to preserve the same from waste or injury, so that after the decease of the said Mary Croxall it may remain and enure unto the heirs of the body of the said Mary Croxall by the said Charles Croxall, according to the uses limited and declared by Robert Morris,
36 late of the city of Philadelphia, merchant, in a deed of trust executed by him to Robert Morris, jr., Adam Hoops, and Aaron D. Woodruff, for the said premises.

In witness whereof, the said George H. Milnor hath hereunto set his hand and seal the day and year first herein written.

(Signed) GEORGE H. MILNOR. [L. S.]

Sealed and delivered in presence of—
JAMES EWING.

Recorded September 24, 1808.

That shortly after the making of the said last-mentioned deeds of conveyance, and before the application to the legislature of New Jersey, by Thomas Croxall hereinafter mentioned, the said Aaron Dickinson Woodruff and Jonathan Rhae departed this life, leaving the said Peter Gordon sole surviving trustee under the said deed of conveyance executed by the said George H. Milnor, as aforesaid; and also prior to the said application the said Thomas Croxall, Daniel C. Croxall, Anna Maria, children of the said Charles and Mary, had arrived to the full age of twenty-one years, and the said Anna Maria had become lawfully married as aforesaid; and that the said Morris Croxall, the other child of said Charles and Mary, became of the full age of twenty-one years in the year 1820, prior to which period, and from a period prior to said application, the said Peter Gordon was the duly constituted guardian of said Morris Croxall, and acted as such guardian.

That in or about the month of November, in the year 1817, the said Thomas Croxall, by his petition in writing, duly signed by him, made an application to the legislature of New Jersey for a division of the said lands and premises, which was in the words following, that is to say:

To the honorable the council and general assembly of the State of New Jersey:

Your memorialist, Thomas Croxall, humbly showeth to your honorable body that his interest in a fee simple title of inheritance to an undivided
37 estate in the county of Sussex, and which estate was deeded to the use of Charles Croxall and Mary Croxall, his wife, and their assigns during their natural lives, by Robert Morris, esq., late of the city of Philadelphia, who was the legal owner of said estate. Your memorialist further showeth to your honorable body that after a variety of revolutions and arrangement with respect to the said estate, it finally was settled and fixed in the right of the aforesaid Mary Croxall and her assigns for and during her natural life.

Your memorialist shews further to your honorable body that some time in the year of eighteen hundred and fourteen the said Mary Croxall, by and through the advice of her council, did deed and convey to your memorialist all the right and title to the undivided part of said estate, which he as lawful heir

laid claim. Your memorialist sheweth further that when the aforesaid conveyance was made your memorialist did agree to give, as a consideration for the same, the sum of five hundred dollars per year during her life, which annuity was to commence as soon as a separation or division could be obtained in said estate.

Your memorialist further sheweth that since the said conveyance has been made difficulties has arisen among the different branches of the family to which your memorialist is a member and immediately connected in the interest of said estate, and as the aforesaid estate is so situated as not to render its respective proceeds to its respective owners agreeable to the intent and meaning of the aforesaid conveyances, very frequently causes of litigation and lawsuits commences between the parties.

Your memorialist, feeling aggrieved by other branches of his family, by the advice of council, takes this method of relief, and flatters himself after having a thorough investigation of the matter that your honorable body will take into consideration the necessity and utility of a division of said estate. And your memorialist in duty bound will ever pray.

(Signed) THOMAS CROXALL.

Against which said application the said Charles Croxall and Mary, his wife, Daniel C. Croxall, Claudius F. Le Grand and Anna Maria, his
38 wife, and Peter Gordon as trustee as aforesaid, and also as guardian of the said Morris Croxall, at first presented to the said legislature a remonstrance in the words following, that is to say:

To the honorable general assembly of the State of New Jersey:

The petition of Charles Croxall and Mary, his wife, Daniel Croxall, Claudius F. Le Grand and Anna Maria, his wife, and Morris Croxall, all of the county of Sussex and State of New Jersey, humbly sheweth that your petitioners see with much pain of mind a memorial before you honors by Thomas Croxall, praying a law to divide the estate of your petitioners, situate in the county and State aforesaid and called the Belvidere estate.

Your petitioners admit a deed was made by the late Robert Morris, esquire, in form, and set out by said Thomas Croxall of the said estate, and at the death of your petitioner Mary Croxall to be equally divided between her children. And your petitioners also admit that in the year of our Lord eighteen hundred and fourteen a deed was given by your petitioners Charles Croxall and Mary Croxall to the said Thomas Croxall and Daniel Croxall, under the deed of the said Robert Morris, esquire, for one half of the Belvidere estate. But your petitioners say that the deed thus given was expressly under injunction of a mortgage to the said Mary Croxall, and which mortgage was cancelled at the instance of the said Thomas and Daniel Croxall for only a few days, to give an accommodation to the said Thomas and Daniel Croxall for taking upon loan a certain sum of money, after which the said mortgage cancelled was to be immediately renewed by said Thomas and Daniel Croxall, but which has been most dishonorably refused by the said Thomas Croxall to be either renewed or paid, although reduced to writing to renew the same, or did the said Thomas or Daniel take up the money so contemplated; and your petitioners Charles and Mary Croxall and Daniel Croxall avow and showeth to your honors that previous to signing the said last-mentioned deed the said Thomas and Daniel Croxall made the
39 most positive assurances that no division should be asked or desired as of the said estate, or that the quiet and repose of the family should be disturbed other than that there agreed on, until the younger son, the before-mentioned Morris Croxall, would come of age, and who is not yet nineteen years old. Your petitioners therefore humbly hope your honors will

not intermeddle in the family affairs and estate of your petitioners, secured by a deed the most sacred for a limited time, and by the most sacred assurances of the said Thomas Croxall to the contrary. Your petitioners also sheweth to your honors that the said estate cannot be so divided as to do equal justice, even if it could be lawfully done; and that is is their desire, your petitioner sheweth, so soon as the said Morris Croxall shall come of age, or sooner, to lay off the said estate in lots to accomodate the fixing of a town, and when all is sold and your petitioner Mary Croxall provided for as agreed on, to divide equally the sales arising from the same. Your petitioners therefore pray that the memorial of the said Thomas Croxall may not be granted. And your petitioners will ever pray, &c.

(Signed) CHARLES CROXALL.
MARY CROXALL.
DANIEL C. CROXALL.
CLAUDIUS F. LE GRAND.
ANNA M. LE GRAND.
MORRIS CROXALL,
By his guardian, PETER GORDON.
PETER GORDON,
Surviving Trustee for said estate.

To which was added the following statement in writing, made by the said Charles Croxall, to wit:

Your petitioner, Charles Croxall, humbly sheweth that if the prayer of the said Thomas Croxall should be granted and a division among the heirs now made and the unimproved lot must fall to the minor, it will oblige his guardian to sell at any rate for his education, and so in the end ruin him; whereas the present situation of the estate is sufficient to support the families, there being four children, two a farm each and two a mill each, until the younger is of age, as each now possesses, to wit, Thomas has the grist mill rented at $600 00, Daniel has the saw mill rented at $400, as the half deeded to them as agreed until the youngest son comes of age; these were the conditions on which the deed was given, and Wm. Ribble, esq., is a witness to this fact of division by Thomas himself until the youngest son comes of age.

CHARLES CROXALL.

But afterwards, during the session of the said legislature, which sat in the months of January and February, in the year 1818, the said remonstrants withdrew their opposition to the said application; and thereupon, with the consent of all the said parties, the said legislature of New Jersey, on the 14th day of February, in the year 1818, passed an act entitled "An act for the division of the Belvidere estate, (so called,) in the county of Sussex and State of New Jersey;" which act, except the above title thereof, was in the words following, that is to say:

Whereas Robert Morris, esquire, late of the city of Philadelphia, in the State of Pennsylvania, did sell and convey certain tracts of land in the county of Sussex, called the Belvidere estate, to certain trustees, for the use and benefit of Charles Croxall and Mary Croxall, his wife, during their natural lives, and after their decease to the heirs of their bodies, which deed is duly executed and recorded in the secretary's office, in Book A B, page 315, as by reference thereunto had will more fully appear; and whereas the said Charles and Mary Croxall have four living children, viz: three sons and one daughter, three of whom are of full age, the youngest a minor of eighteen years, who has chosen Peter Gordon his guardian; and whereas the said heirs and children of the said Charles and Mary Croxall have set forth

by memorial their earnest desire to have said estate divided into four equal shares, that each one may know his, and sell and improve the same; and whereas the said parents, Charles Croxall and Mary, his wife, have given their full consent and approbation to the wishes of their said children,
41 provided an annuity of two thousand dollars is secured to and paid to Mary Croxall yearly: Therefore—

SEC. 1. *Be it enacted by the council and general assembly of this State, and it is hereby enacted by the authority of the same,* That William T. Anderson, Daniel Stewart, and Nathaniel Sexton, esquires, shall be, and they are hereby, appointed commissioners for dividing the lands and tenements situated in the county of Sussex, which were so conveyed by the said Robert Morris to trustees in trust as aforesaid.

SEC. 2. *And be it enacted,* That the said commissioners may employ a surveyor, at the expense of the said children and heirs, to enter on the lands so conveyed by the said Robert Morris to the said trustees and to make a correct map of the same, and then to divide the same into four equal parts by metes and bounds, which four parts shall be equal in value according to the best of their judgment, taking into consideration the quantity, quality, situation, natural advantages, and the improvements thereon; and having so divided the same, to make the several divisions by their respective metes and bounds; and to assign to each of the said heirs, by lot or otherwise, his or her one fourth part of the said premises according to the divisions so made and marked.

SEC. 3. *And be it enacted,* That the annuity mentioned in the foregoing preamble for Mary Croxall shall have first been secured to her during her natural life in such a manner as to be fully satisfactory both to herself and to her trustee, Peter Gordon, and which shall be signified by their signatures and acknowledgment to deeds of quitclaims before the said heirs shall have a legal title or fee simple for any part of said estate.

SEC. 4. *And be it enacted,* That if the said Charles Croxall, husband of the said Mary Croxall, shall survive the said Mary Croxall, the said annuity shall be continued to be paid to him during his natural life.

SEC. 5. *And be it enacted,* That the said heirs shall be equally and separately liable and bound to pay and secure their equal fourth part of said annuity, viz: five hundred dollars yearly each.

42 SEC. 6. *And be it enacted,* That the said annuity shall be paid to Peter Gordon, trustee for Mary Croxall, and solely for her use, without any deduction or charge whatsoever.

Passed February 14, 1818.

That after the passage of said act and during the year 1818 the commissioners named in said act, to wit, William T. Anderson, Daniel Stewart, and Nathaniel Saxton, undertook the duties imposed upon them therein, employed a surveyor, and entered upon the lands so conveyed by the said Robert Morris to trustees as aforesaid, and made a correct map of the same, and divided the same into four equal parts, by metes and bounds, the said four parts being equal in value, and marked and designated the same on the said map, and allotted, assigned, and set off to each of the said children of the said Charles and Mary Croxall, to wit, Thomas Croxall, Daniel C. Croxall, Anna Maria Le Grand, and Morris Croxall, his and her one fourth part of the said lands and premises, by metes and bounds, according to the divisions so made; to hold him, her, and them, respectively, in severalty, as mentioned and described in the certificate and report of said commissioners hereinafter set forth; and, having completed the said allotment and division, they, the said commissioners, made and signed a written certificate and report of the said allotment and division, with the said map thereto annexed,

which said certificate and report bears date the 7th day of December, in the year 1818, and (except the description of the said several lots of land and the said map) is in the words following, that is to say:

To all to whom these presents shall come:

Whereas, by an act of the council and general assembly of the State of New Jersey, entitled "An act for the division of the Belvidere estate, (so called,) in the county of Sussex and State of New Jersey," passed the 14th day of February, in the year of our Lord one thousand eight hundred and eighteen, reciting that "whereas Robert Morris, esq., late of the city of Philadelphia, in the State of Pennsylvania, did sell and convey certain tracts of land in the county of Sussex, called the Belvidere estate, to certain trustees, for the use and benefit of Charles Croxall and Mary Croxall, his wife, during
43 their natural lives, and after their decease to the heirs of their bodies, which deed is duly executed and recorded in the secretary's office, in book A R, page 315, as by reference thereunto had will more fully appear; and whereas the said Charles and Mary Croxall have four living children, viz: three sons and one daughter, three of whom are of full age, the youngest a minor of eighteen years, who has chosen Peter Gordon his guardian; and whereas the said heirs and children of the said Charles and Mary Croxall have set forth, by memorial, their earnest desire to have said estate divided into four equal shares, that each one may know his own, and sell or improve the same; and whereas the said parents, Charles Croxall and Mary, his wife, have given their full consent and approbation to the wishes of their said children, provided an annuity of two thousand dollars is secured to and paid to Mary Croxall yearly." Among other things in the said act contained it is and stands enacted "that William T. Anderson, Daniel Stewart, and Nathaniel Saxton, esqs., shall be, and they are hereby, appointed commissioners for dividing the lands and tenements, situated in the county of Sussex, which were so conveyed by the said Robert Morris to trustees, in trust as aforesaid:"

Now know ye that we, the said William T. Anderson, Daniel Stewart, and Nathaniel Saxton, the commissioners appointed as aforesaid, have employed a surveyor and entered on the lands so conveyed by the said Robert Morris to the said trustees, and made a correct map of the same, and have divided the same into four equal parts, by metes and bounds, which four parts are equal in value, according to the best of our judgments, taking into consideration the quantity, quality, situation, natural advantages, and improvements thereon, and we have marked the several divisions by their respective metes and bounds, and have allotted, assigned, and set off to each of the said children and heirs (of the said Charles and Mary Croxall) his and her one fourth part of the said premises, by metes and bounds, according to the divisions so made and marked, to hold to him, her, and them, respectively, in severalty, as follows, that is to say—

I. We have allotted, assigned, and set off unto Ann Maria Le Grand the share No. 1, consisting of lots No. 1, 7, and 10, respectively, bounded
44 and described as follows, to wit:

(Description omitted.)

II. We have allotted, and assigned, and set off unto Daniel Croxall the share No. 2, consisting of lots No. 4, [illegible], 9, and 11, respectively, bounded and described as follows:

(Description omitted.)

III. We have allotted, assigned, and set off unto Thomas Croxall the share No. 3, consisting of lots No. 3, 5, and 12, respectively, bounded and described as follows:

(Description omitted.)

IV. We have allotted, assigned, and set off, to Morris Croxall, the share No. 4, consisting of lots No. 2, 8, and 13, respectively, bounded and described as follows :

(Description omitted.)

In testimony whereof, we, the said commissioners, have hereunto subscribed our names, this seventh day of December, in the year of our Lord one thousand eight hundred and eighteen.

(Signed) WILLIAM T. ANDERSON,
D. STEWART,
NATHANIEL SAXTON,
Commissioners, &c.

That the premises in dispute are part of the said lot designated as No. 2, which constituted part of said share No. IV, allotted, assigned, and set off to the said Morris Croxall, as mentioned in said report and certificate.

That shortly after the making of said division and the said certificate thereof, to wit, on the fifth day of March, in the year 1819, mutual deeds were executed by the said children to each other for their respective shares so allotted to them as aforesaid by the said commissioners, (except the said Morris Croxall, who was then under the age of twenty-one years,) which bargains and sales and releases were also executed and confirmed by the said Charles Croxall and Mary, his wife; that is to say, three several tripartite indentures, each bearing date the day and year last aforesaid, were executed and delivered by the parties thereto, respectively, as follows namely:

45 one indenture tripartite made between the said Charles Croxall and Mary, his wife, and Peter Gordon, as trustee for the said Mary, party of the first part; the said Daniel C. Croxall, Claudius F. Le Grand and Anna Maria, his wife, and Morris Croxall, party of the second part; and the said Thomas Croxall, party of the third part, which said indenture, duly executed under the hands and seals of all the said parties (except the description of the lands and premises therein granted and released, which description is omitted for the sake of brevity) is in the words following, that is to say :

This indenture tripartite, made this fifth day of March, in the year of our Lord one thousand eight hundred and nineteen, between Charles Croxall and Mary, his wife, of Belvidere, in the county of Sussex, and State of New Jersey, and Peter Gordon, esq., of Trenton, in the county of Hunterdon and State aforesaid, as trustee for the said Mary Croxall, party of the first part, Daniel Croxall, Claudius F. Le Grand and Anna Maria, his wife, and Morris Croxall, which said Daniel Croxall, Anna Maria Le Grand, and Morris Croxall are three of the children of the said Charles and Mary Croxall, party of the second part; and Thomas Croxall, another of the children of the said Charles and Mary Croxall, party of the third part. Whereas Robert Morris, esq., late of Philadelphia, deceased, by a certain indenture tripartite, made the fifteenth day of November, in the year of our Lord one thousand seven hundred and ninety-three, between the said Robert Morris, esq., of the first part; Charles Croxall and Mary, his wife, of the second part; and Robert Morris, jr., Adam Hoops, and Aaron D. Woodruff, trustees for the said Charles Croxall and Mary, his wife, of the third part, did grant, bargain, sell, and convey unto the said trustees, for the use and benefit of the said Charles Croxall and Mary, his wife, and the heirs of their bodies, two certain tracts of land in the county of Sussex and State aforesaid (since called the Belvidere estate; the first whereof, called the Belvidere farm, situate in the township of Oxford, in said county, in the said deed more particularly described, containing four hundred and sixty-four and an half acres of land; the second tract, situate in the township of Knowlton, in the said county,

called the "White Rocks," in the said deed more particularly described, containing one hundred and fifty acres of land with allowance, &c., be the same more or less, as by the said deed recorded in the secretary's office at Trenton, in Lib. A R, of Deeds, fol. 315, &c., more fully appears. And whereas, by virtue of sundry proceedings and conveyances in the law, all the estate and interest of the said Charles Croxall therein became vested in the said Mary Croxall; and the said Charles Croxall and Mary, his wife, by a certain indenture, bearing date on the first day of July, in the year of our Lord eighteen hundred and fourteen, for divers considerations them thereunto moving, did grant, bargain, sell, and convey unto them, the said Thomas and Daniel Croxall, their heirs and assigns, the one half part of the said lands and premises, and all the estate, right, title, and interest of the said Charles and Mary Croxall of, in, and to the same, as by the said decree, recorded in the clerk's office of the county of Sussex, in Lib. D 2, fol. 77, &c., more fully appears. And whereas, by certain other proceedings and conveyances in the law duly had, made, and executed, the trust of the legal estate of the trustees above mentioned of, in, and to all and singular the premises aforesaid became vested in Peter Gordon, esq., his heirs and assigns, in trust for the use of the said Charles Croxall and Mary, his wife, and the heirs of their bodies, according to the uses, intents, and purposes in the said deed from the said Robert Morris, esq., expressed, limited, and declared of and concerning the same. And whereas, by an act of the legislature of the State of New Jersey, entitled "An act for the division of the Belvidere estate, (so called,) in the county of Sussex and State of New Jersey," passed the 14th day of February, in the year of our Lord 1818, reciting, among other things, that whereas the said heirs and children of the said Charles and Mary Croxall have set forth, by memorial, their earnest desire to have said estate divided into four equal shares, that each one may know his own, and sell or improve the same. And whereas the said parents, Charles Croxall and Mary, his wife, have given their full consent and approbation to the wishes of their said children, provided an annuity of two thousand dollars is secured to and paid to Mary Croxall yearly. Among other things in that said act contained, it is enacted "that William T. Anderson, Daniel Stewart, and Nathaniel Saxton, esqs., shall be, and they are hereby, appointed commissioners for dividing the lands and tenements, situated in the county of Sussex, which were so conveyed by the said Robert Morris to trustees in trust as aforesaid;" and "that the said commissioners divide the same into four equal parts, by metes, bounds, &c., and assign to each one of the said heirs, by lot or otherwise, his or her one fourth part of the said premises," &c.; and that the annuity mentioned in the foregoing preamble, for Mary Croxall, shall have first been secured to her during her natural life, and in such manner as to be fully satisfactory both to herself and to her trustee, Peter Gordon, and which shall be signified by their signatures and acknowledgments to deeds of quitclaim before the said heirs shall have a legal title or fee simple for any part of said estate. And whereas the said William T. Anderson, Daniel Stewart, and Nathaniel Saxton, the commissioners appointed in and by said act, have made a division of the said premises into four equal parts or shares, according to the provisions of the said act, and have allotted, assigned, and set off unto the said Thomas Croxall, party to these presents of the third part, the share No. 3 of said premises, consisting of lots Nos. 3, 5, and 12, respectively, bounded and described as hereinafter mentioned, as by the report thereof, under the hands of the said commissioners, bearing date the 7th day of December, A. D. 1818, more fully appears: Now this indenture witnesseth, that the said Charles Croxall and Mary, his wife, and the said Peter Gordon, as trustee as aforesaid, the party to these presents of the first part, and the said Daniel Croxall, Claudius F. Le Grand and Anna Maria,

his wife, and Morris Croxall, the party of the second part, for the purpose of perfecting the said division according to the intent and meaning of the said act of the legislature, and for and in consideration of the sum of one dollar to each one of them in hand paid by the said Thomas Croxall, the party to these presents of the third part, the receipt whereof they, the said parties of the first and second parts, do hereby acknowledge, have and each and every of them, for him, her, and themselves, respectively, hath
48 granted, remised, released, and forever quitclaimed, and by that presents do grant, remise, release, and forever quitclaim, unto the said Thomas Croxall, the party aforesaid of the third part, and his heirs and assigns, all those several lots and parcels of land and premises in the said division known and designated by share No. 3, consisting of lots Nos. 3, 5, and 12, respectively, bounded and described as follows, viz:

(The description of the lands and premises is here omitted, as above mentioned.)

Being the said Thomas Croxall's share of the premises so as aforesaid conveyed by the said Charles and Mary to the said Thomas and Daniel Croxall, together with all and singular the buildings, improvements, woods, water, water-courses, and lands covered with water, advantages, rights, profits, privileges, hereditaments, and appurtenances to the same belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, possession, property, claim, and demand of them, the said parties of the first part and of the second part above mentioned, and each and every of them, in law, equity, or otherwise howsoever, of, in, and to the said released premises, and every part and parcel thereof. To have and to hold the said three lots or parcels of land, hereditaments, and premises hereby released, with the appurtenances, unto the said Thomas Croxall, the party aforesaid of the third part, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Thomas Croxall, his heirs and assigns, forever; so that neither they, the party aforesaid of the first part and the party aforesaid of the second part, nor any of them, nor their nor any of their heirs or assigns, nor any other person or persons for them, or any of them, or in their names, or in the name or names, right or stead of any of them, shall or will have, claim, challenge, or demand any estate, right, title, or interest of, in, or to the said released premises, or any part or parcel thereof, but from all and every such estate, right, title, interest, claim, and demand of, in, or to the said released premises, or any part thereof, they and every of them shall be utterly excluded and forever
49 barred by these presents. In witness whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

That another of the said three indentures was made between the said Charles Croxall and Mary, his wife, and Peter Gordon, as trustee for the said Mary, party of the first part; the said Thomas Croxall and Mary, his wife, Claudius F. Le Grand and Anna Maria, his wife, and Morris Croxall, party of the second part, and the said Daniel C. Croxall, party of the third part, whereby the said parties of the first and second parts thereto, for the consideration therein mentioned, did convey unto the said Daniel C. Croxall, and to his heirs and assigns, the said several lots of land which were so allotted to him for his share as aforesaid, being the said Daniel Croxall's share of the premises so as aforesaid conveyed by the said Charles and Mary to the said Thomas and Daniel Croxall; which last-mentioned indenture was of the same form, and contained the same covenants in every respect, as the said indenture for the said Thomas's share above mentioned and set forth.

That the remaining of said three indentures was made between the said Charles Croxall and Mary, his wife, and Peter Gordon, as trustee of the said

Mary, party of the first part; the said Thomas Croxall and Mary, his wife, Daniel C. Croxall and Morris Croxall, party of the second part; and Anna Maria Le Grand, party of the third part, whereby the said parties of the first and second parts, for the considerations therein mentioned, did convey to the said Anna Maria Le Grand, her heirs and assigns, the said several lots which were so allotted to her for her share as aforesaid, which last-mentioned indenture was of the same form, and contained the said covenants in every respect as the said other two indentures last above mentioned.

That the said Morris Croxall executed and delivered the said three several indentures, after he became of full age, in the month of January, in the year 1821, and did not receive a corresponding conveyance or release for his share of the said property until the month of March, in the year 1823, when two several deeds of conveyance and release were duly executed and delivered to him for that purpose as follows, that is to say, one deed bearing
50 date the fifteenth day of March, in the year 1823, executed by the said Thomas Croxall and Mary, his wife, Daniel C. Croxall and Mary Caroline, his wife, Claudius F. Le Grand and Anna Maria, his wife, of the first part, and the said Morris Croxall, of the second part; which deed, excepting the description of the land and premises thereby conveyed, (which description is omitted for the sake of brevity,) is in the words following, that is to say :

This indenture, made this fifteenth day of March, in the year of our Lord one thousand eight hundred and twenty-three, between Thomas Croxall and Mary, his wife, Daniel C. Croxall, esquire, and Mary Caroline, his wife, and Claudius Francis Le Grand and Anna Maria Le Grand, his wife, (which said Thomas Croxall, Daniel C. Croxall, and Anna Maria Le Grand are three of the children and heirs of Charles Croxall and Mary, his wife, hereinafter mentioned,) all of Belvidere, in the township of Oxford, county of Sussex and State of New Jersey, party of the first part; and Morris Croxall, (another of the children and heirs of the said Charles Croxall and Mary, his wife,) of the same place, party of the second part. Whereas Robert Morris, esquire, late of the city of Philadelphia, deceased, by a certain indenture tripartite, made the fifteenth day of November, in the year of our Lord one thousand seven hundred and ninety-three, between the said Robert Morris, esquire, of the first part, the said Charles Croxall and Mary, his wife, of the second part, and Robert Morris, junior, Adam Hoops, and Aaron Dickinson Woodruff, esquires, trustees for the said Charles Croxall and Mary, his wife, &c., of the third part, did grant, bargain, sell, and convey to the said trustees, for the use and behoof of the said Charles Croxall and Mary, his wife, and the heirs of their bodies, two certain tracts of land in the said county of Sussex, called the Belvidere estate, the first called the Belvidere tract, situate in the township of Oxford aforesaid, containing four hundred and sixty-four and one half acres of land, and in the said indenture more particularly desscribed; the second tract, situate in the township of Knowlton, in the said county, called the White Rock Place, in the said indenture more particularly
51 described, and containing one hundred and fifty acres of land, with allowances, &c., be the same more or less, as by the said deed of indenture, recorded in the secretary's office at Trenton, in Lib. A R of Deeds, fol. 315, more fully appears. And whereas, by virtue of sundry proceedings and conveyances in the law, all the estate and interest of the said Charles Croxall in the same property became vested in the said Mary Croxall; and by certain other proceedings and conveyances in the law, duly had, made, and executed, the trust or legal estate of the trustees above mentioned of, in, and to all and singular the premises aforesaid became vested in Peter Gordon, esq , aforesaid, and his heirs and assigns, in trust, for the use of the said Charles Croxall and Mary, his wife, and the uses, intents, and purposes

in the said indenture, from the said Robert Morris, esq., expressed, limited, and declared, of and concerning the same. And whereas, by an act of the legislature of the State of New Jersey aforesaid, entitled "An act for the division of the Belvidere estate, (so called,) in the county of Sussex and State of New Jersey, passed the 14th day of February, A. D. 1818, reciting that whereas the said heirs and children of the said Charles and Mary Croxall have set forth, by memorial, their earnest desire to have said estate divided into four equal shares, that each may know his own and sell or improve the same. And whereas the said parents, Charles Croxall and Mary, his wife, have given their full consent and approbation to the wishes of their said children, provided an annuity of two thousand dollars is secured to and paid to Mary Croxall yearly. Amongst other things in the said act contained it is enacted that William T. Anderson, Daniel Stewart, and Nathaniel Saxton, esqs., shall be, and they are hereby, appointed commissioners for dividing the lands and tenements situated in the county of Sussex, which were so conveyed by the said Robert Morris to the trustees in trust, as aforesaid, and that the said commissioners divide the same into four equal parts, by metes and bounds, and assign to each of the said heirs, by lot or otherwise, his or her one fourth part of the said premises, and that the annuity mentioned in the foregoing preamble, for Mary Croxall, shall have first been secured to her during her natural life and in such manner as to be fully
52 satisfactory both to herself and her trustee, Peter Gordon, and which shall be signified by their signatures and acknowledgment to deeds of quitclaim before the said heirs shall have a legal title or fee simple in any part of said estate. And whereas the said William T. Anderson, Daniel Stewart, and Nathaniel Saxton, the commissioners appointed in and by the said act, have made a division of the said premises into four equal parts or shares, according to the provisions of the said act, and have allotted, assigned, and set off unto the said Morris Croxall, the party to these presents of the second part, the share or part of the said property distinguished in the plan of the division thereof as share No. 4, consisting of lots marked in said plan Nos. 2, 8, and 13, and respectively bounded and described as hereinafter mentioned, as by the report of the said division, under the hands of the said commissioners, bearing date the 7th day of December, 1818, more fully appears. And whereas the said Charles Croxall and Mary, his wife, and Peter Gordon, esquire, as trustee for the said Mary Croxall, by deed of quitclaim, bearing date the eleventh of March, A. D. 1823, did release and quitclaim unto the said Morris Croxall a portion of the share so as aforesaid allotted to him, and did agree to retain the remainder of the said share in full consideration and discharge forever of that part of the aforesaid annuity to be paid by the said Morris Croxall, as aforesaid:

Now this indenture witnesseth that the said Thomas Croxall and Mary, his wife, Daniel C. Croxall, esq., and Mary Caroline, his wife, and Claudius Francis Le Grand and Anna Maria, his wife, the party to these presents of the first part, for the purpose of perfecting the said division according to the intent and meaning of the said act of the legislature, and for and in consideration of the sum of one dollar to each one of them in hand paid before the sealing and delivery of these presents by the said Morris Croxall, the party to these presents of the second part, the receipt whereof they, the said party of the first part, do hereby acknowledge, have, and each and every of them for him, her, and themselves, respectively, hath granted, remised, released, and forever quitclaimed, and by these presents do grant, remise, release, and
53 forever quitclaim, unto the said Morris Croxall, the party aforesaid of the second part, and his heirs and assigns, all those several lots and parcels of land and premises in the said division distinguished as share

No. 4, consisting of the lots marked in the said plan Nos. 2, 8, and 13, and respectively bounded and described as follows:

(The description of said land is here omitted for the sake of brevity.)

Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, water ponds, and lands covered with waters, advantages, rights, members, privileges, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, possession, property, claim, and demand of them, the said party of the first part, and of each and every of them, in law, equity, or otherwise howsoever, of, in, and to the said released premises and every part and parcel thereof. To have and to hold the above-described several lots or parcels of land, hereditaments, and premises hereby released, with the appurtenances, unto the said Morris Croxall, the party aforesaid of the second part, and his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Morris Croxall, and his heirs and assigns, forever, so that neither they, the said party of the first part, nor either nor any of them, nor their, nor either nor any of their heirs or assigns, nor any other person or persons for them or any of them, or in their or any of their names or name, right or stead, shall or will have, claim, challenge, or demand any estate, right, title, or interest of, in, or to the said released premises or any part thereof, but from all and every such estate, right, title, interest, claim, or a demand of, in, or to the said released premises, or any part thereof, they and every of them shall be utterly excluded and debarred by these presents forever. In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

That the premises in dispute are part of the lands and premises described and conveyed and released by the said last-mentioned deed.

54 That the said Charles Croxall and Mary Croxall, his wife, in lieu and satisfaction of the annuity to be paid by said Morris Croxall to the said Charles and Mary, for their share of said property, did reserve for their possession and use, during their natural lives, the premises in dispute and certain other portions of the share allotted to the said Morris as aforesaid, and for the residue of said share did, together with the said Peter Gordon, as trustee as aforesaid, execute and deliver to the said Morris Croxall a certain indenture, bearing date the eleventh day of March, in the year 1823, made between the said Charles Croxall and Mary, his wife, and Peter Gordon, as trustee of the said Mary, party of the first part, and the said Morris Croxall, party of the second part, in and by which indenture, after reciting the said conveyance by Robert Morris, the act of legislature, and partition and other things, it was, amongst other things, recited that the said Charles Croxall and Mary, his wife, and the said trustee had agreed to accept and retain and hold to the use of the said Charles Croxall and Mary, his wife, during their natural lives, in lieu, place, and stead, and in full consideration and discharge forever of that part of the aforesaid annuity of two thousand dollars to be paid by the said Morris Croxall as specified in the act, all the part or share of said property so allotted and assigned to the said Morris as aforesaid, except the lot or part of the same in that indenture released and described, and by which indenture the said Charles Croxall and Mary, his wife, and the said Peter Gordon, as trustee as aforesaid, for the purpose of perfecting the said division according to the intent and meaning of the said act of the legislature, and for and in consideration of one dollar to each of them in hand paid by the said Morris Croxall, did grant, remise, release, and forever quitclaim unto the said Morris, his heirs and assigns, a certain tract of land in the said indenture described, being parcel of the said share so allotted to him, but not including the premises in dispute; to have

and to hold the said lot or tract of land thereby released, with the hereditaments, appurtenances, &c., unto the said Morris Croxall, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Morris, and his heirs and assigns, forever; and the said indenture concluded with
55 the usual covenant of non-claim, expressed in the same terms employed for that purpose in the said other deeds for the other shares above mentioned and referred to.

That the said Thomas Croxall and Daniel C. Croxall, at the time of receiving the said deeds for their respective shares before mentioned, to wit, on or about the fifth day of March, in the year 1819, secured to the said Mary Croxall, wife of the said Charles, their portions of the said annuity of two thousand dollars respectively, in a manner satisfactory as well to the said Charles Croxall and Mary, his wife, as to the said Peter Gordon, trustee, by by executing and delivering to the said Peter Gordon, as trustee for the said Mary Croxall, mortgages in fee simple upon the respective shares of them, the said Thomas and Daniel, for that purpose; and the said Anna Maria Le Grand secured to the said Charles and Mary her share of the said annuity, satisfactory as well to the said Charles and Mary as to the said trustee.

That the said Thomas Croxall and Daniel C. Croxall, immediately after the execution and delivery of the said deeds so given to them for their respective shares as aforesaid, to wit, in March, 1819, entered into and took possession in severalty of their said respective shares, and retained and kept possession thereof in severalty until the same were purchased by Garret D. Wall, as hereinafter mentioned; and the said Claudius F. Le Grand and Anna Maria, his wife, immediately after the execution and delivery of the said deed so given to the said Anna Maria for her share as aforesaid, to wit, in March, 1819, entered into and took possession in severalty of her said share, and retained and kept possession thereof in severalty until the same was purchased by the said Garret D. Wall as hereinafter mentioned; and the said Morris Croxall, immediately after the execution and delivery of the said deed so given to him for his said share as aforesaid, entered into and took possession in severalty of his said share, except the portion thereof reserved by the said Charles and Mary Croxall in lieu of their annuity as aforesaid, and retained and kept possession thereof in severalty until the same was purchased by the said Garret D. Wall, as hereinafter mentioned,
56 and continued to live at home with his said parents on the portion so reserved by them; and the said Charles Croxall and Mary, his wife, continued to occupy and reside on the said reserved portion, including the premises in dispute, during the lifetime of the said Mary; and the said Charles continued further to occupy and reside thereon until the same was purchased by the said Garret D. Wall, as hereinafter mentioned.

That in the years 1824 and 1825 the said Garret D. Wall became purchaser of all the said Belvidere property in manner following, that is to say:

Firstly. As to the said share of the said Thomas: The said Thomas, on the fifth day of March, in the year 1819, did execute and deliver a mortgage in fee simple on said share to Peter Gordon, trustee for Mary Croxall, as before mentioned, to secure the payment of the said annuity of five hundred dollars to the said Charles and Mary during their lives, which mortgage was duly assigned to the said Garret D. Wall on the sixteenth day of February, 1821, to secure to the said Wall priority for a mortgage held by him; and on the second day of February, in the year 1824, was reassigned to the said Wall by the said Charles Croxall and Mary, his wife, and the said Peter Gordon, trustee as aforesaid, absolutely, with a release and conveyance of all the right, title, and interest of the said Charles and Mary Croxall, and the said Peter Gordon, as such trustee, to the said Garret D. Wall, his heirs and assigns, of the said mortgaged premises in said mortgage contained, which

assignment was duly executed under the hands and seals of the said Charles Croxall and Mary, his wife, and the said Peter Gordon, and delivered to the said Garret D. Wall.

That on the 21st day of September, in the year 1819, the said Thomas Croxall executed a mortgage in fee simple on the said lands so alloted to him as his share of said property, to the said Garret D. Wall, to secure the payment of $1,116 19 due from the said Thomas to said Wall, with interest thereon, and on the 3d day of January, in the year 1821, the said Thomas Croxall and Mary, his wife, executed another mortgage in fee simple on the said share to the said Garret D. Wall to secure the payment of $5,000 due from the said Thomas to the said Wall, with interest thereon, the in-
57 terest being payable half yearly, and the principal on the first day of January, 1828; and on the first day of January, in the year 1823, the said Thomas Croxall and Mary, his wife, executed another mortgage in fee simple on the said lands so allotted to the said Thomas for his share as aforesaid, to the said Garret D. Wall, to secure the payment of eight thousand dollars, due from the said Thomas to said Wall on or before the first day of January, in the year 1828, with interest thereon; which last-mentioned mortgage contained a covenant on the part of the said Thomas Croxall in the words following, that is to say: "And the said Thomas Croxall, for himself, his heirs, executors, and administrators, doth covenant and grant to and with the said party of the second part, his heirs and assigns, that he, the said party of the second part, his heirs and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance, or denial of the said parties of the first part, their heirs or assigns, or of any other person or persons whatsoever.

That on the twenty-eighth day of July, in the year 1824, the said Garret D. Wall recovered a judgment against said Thomas in the court of common pleas for Sussex County, in New Jersey, for the sum of one thousand dollars, and on the twelfth day of August, in the same year, the said lots of land so allotted to the said Thomas Croxall for his share as aforesaid were sold at sheriff's sale under execution on a prior judgment against the said Thomas Croxall, and the said Garret D. Wall became the purchaser thereof, and a deed was duly executed to him by the said sheriff therefor, conveying to said Wall, his heirs and assigns, all the right, title, and interest of the said Thomas Croxall in the said lots of land; and on the nineteenth day of May, in the year 1825, the said Thomas Croxall and Mary, his wife, executed and delivered to the said Garret D. Wall a deed of conveyance and release of the said lots of land composing the said share of the said Thomas, to
58 have and to hold the same to the said Garrett D. Wall, his heirs and assigns, to his and their only use, benefit, and behoof forever, which deed is in words following, that is to say:

Know all men by these presents that we, Thomas Croxall and Mary, his wife, of Belvidere, in the county of Warren and State of New Jersey, in consideration of the sum of ten dollars in hand paid by Garret D. Wall, esq., of the city of Trenton, in the State aforesaid, before the sealing and delivery hereof, the receipt whereof we do hereby acknowledge, have granted, remised, released, and forever quitclaimed, and by these presents do fully, freely, and absolutely grant, remise, release, and forever quitclaim, and confirm, unto the said Garret D. Wall, his heirs and assigns, all those three several lots, tracts, or parcels of land situate, lying, and being in the townships of Oxford and Knowlton, in the county of Warren, (late Sussex,) in the State aforesaid, which Daniel Stewart, Nathaniel Saxton, and William T. Ander-

son, esqs., commissioners, appointed by an act of the legislature of the State of New Jersey, entitled "An act for the division of the Belvidere estate, so called, in the county of Sussex and State of New Jersey," passed the 14th day of February, in the year of our Lord 1818, to divide the said estate, called the Belvidere estate, by their report, bearing date the 7th day of December, A. D. 1818, did assign and set off to the said Thomas Croxall, for his one fourth part or share of said estate, known and distinguished in said report by share No. 3, consisting of lots No. 3, 5, and 12, respectively butted, bounded, and described as in the said report is more particularly set forth and contained, being the same premises which Charles Croxall and Mary, his wife, and Peter Gordon, surviving trustee of the said Mary Croxall, by their deed, bearing date the fifth day of March, in the year of our Lord one thousand eight hundred and nineteen, released and conveyed to the said Thomas Croxall, his heirs and assigns, in fee, and which Van Clure Moore, esq., late high sheriff of the county of Sussex, by his deed of conveyance, bearing date the day of , in the year of our Lord eighteen hundred and , granted and conveyed to the said Garret D. Wall, his heirs and assgns, in fee simple, together with all and singular the
59 appurtenances and all the estate, right, title, interest, claim, and demand whatsoever, in law, equity, or otherwise, which they, the said Thomas Croxall and Mary, his wife, or either of them, now have, and all dower and right and title of dower which the said Mary Croxall, in case of her surviving the said Thomas Croxall, might or could hereafter have, claim, or demand of, in, to, or out of the said released premises, or any part or parcel thereof. To have and to hold the said released premises, and every part and parcel thereof, unto the said Garret D. Wall, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Garret D. Wall, his heirs and assigns, forever, so that neither they, the said Thomas Croxall and Mary, his wife, or either of them, their heirs or assigns, or any person or persons by, from, or under them or either of them, shall or may have, claim, or demand any estate, right, title, dower, right of dower, or interest of, in, or to the said premises, or any part or parcel thereof, but thereof and therefrom shall be utterly barred and forever excluded by these presents.

In witness whereof, the said Thomas Croxall and Mary, his wife, have hereunto set their hands and seals this nineteenth day of May, in the year of our Lord eighteen hundred and twenty-five.

THOMAS CROXALL. [L. S.]
MARY CROXALL. [L. S.]

Signed, sealed, and delivered in the presence of us.
DANIEL C. CROXALL.
NATHANIEL SAXTON.

Recorded July 5, 1825.

Secondly. As to the said share of the said Daniel C. Croxall: That the said Daniel C. Croxall, on the first day of January, in the year 1822, executed and delivered to the said Garret D. Wall a mortgage in fee simple upon the lots of land so allotted and assigned to the said Daniel for his share as aforesaid to secure the payment of six thousand dollars on or before the 1st day of January, 1827, with interest, being money due from the said Daniel to the said Garret D. Wall; and the said Daniel, on the 1st day of August, in the year 1823, executed and delivered to the said Garret D. Wall another mortgage in fee simple upon the said lots of land, to secure the pay-
60 ment of five thousand dollars on or before the 1st day of October, then next, with interest, being other money due from the said Daniel to the said Garret D. Wall.

That on the third day of January, 1823, one John Savage recovered a judgment in due form of law against the said Claudius F. Le Grand, Daniel C. Croxall, and Morris Croxall, in the court of common pleas of the county of Sussex aforesaid, for the sum of three thousand dollars debt and four dollars cost of suit, upon which judgment an execution was issued according to law, directed to the sheriff of the county of Sussex, and was by him executed by a levy on all of the said several lots of land so allotted to the said Anna Maria Le Grand, Daniel C. Croxall, and Morris Croxall, under which execution Van Cleve Moore, esquire, the said sheriff, having made sale of the said lots of land so allotted to the said Daniel to the said Garret D. Wall, by a deed of conveyance duly executed according to law, bearing date the 12th day of August, 1824, conveyed to the said Garret D. Wall all the right, title, and interest of the said Daniel in the said several lots so allotted to the said Daniel as aforesaid; and on the 19th day of May, in the year 1825, the said Daniel C. Croxall and Mary Caroline, his wife, executed and delivered to the said Garret D. Wall a deed of conveyance and release of the said lots of land, comprising the said share of the said Daniel, to have and to hold the same to the said Garret D. Wall, his heirs and assigns, to his and their sole and only proper use, benefit, and behoof forever, which deed contains the usual covenant of non-claim, following the habendum thereof in the words following, that is to say, "So that neither they, the said Daniel C. Croxall and Mary Caroline, his wife, or either of them, their heirs or assigns, or any person or persons by, from, or under them, or either of them, shall or may have, claim, or demand any estate, right, title, dower, right of dower, or interest of, in, or to the said premises, or any part or parcel thereof, but thereof and therefrom shall be utterly barred and forever excluded by these presents."

That no part of the money so secured by the said mortgages, given by the said Daniel and wife aforesaid, except a portion of the interest thereof,
61 was ever paid, but that the said mortgages are still held by the heirs and assigns of the said Garret D. Wall as muniments of title to the said premises.

Thirdly. As to the share of the said Anna Maria Le Grand: That the said Claudius F. Le Grand and Anna Maria, his wife, by a deed of conveyance duly executed and acknowledged, and bearing date the 1st day of October, in the year 1825, by and between them of the first part and the said Garret D. Wall of the second part, for the consideration of twelve thousand dollars, paid to them by the said Garret D. Wall, did grant, bargain, sell, and convey to the said Garret D. Wall, his heirs and assigns, all those several lots and parcels of land and premises so allotted to the said Anna Maria Le Grand, for her share as aforesaid, to have and to hold unto the said Garret D. Wall, his heirs and assigns, to his and their own proper use, benefit, and behoof forever; which said deed of conveyance contains the usual covenants of seisin in right of the said Anna Maria of an indefeasable estate in fee simple and full covenants of warranty.

Fourthly. As to the said share of the said Morris Croxall: That the said Morris Croxall, on the 19th day of March, in the year 1823, executed and delivered to one Thomas Lomasson, a mortgage in fee simple upon a part of one of the lots of land so alotted and assigned to him as aforesaid for his share, to secure the payment of the sum of $1,700 on or before the 1st day of July, in the year 1824, with interest, being money due from the said Morris Croxall to the said Thomas Lomasson, which mortgage was afterwards assigned and transferred, together with the said mortgaged premises, to one Matthias O. Halstead, and was to him paid by the said Garret D. Wall after the conveyance to him, the said Garret D. Wall, by the said Morris Croxall hereinbefore stated, which conveyance included the said mortgaged premises.

That on the thirtieth day of September, in the year 1825, the said Morris Croxall, by a deed of conveyance, bearing date on that day, between the said Morris Croxall of the one part and the said Garret D. Wall of the second part, for the consideration of the sum of six thousand dollars, paid to
62 him by the said Garret D. Wall, did convey unto the said Garret D. Wall, in fee simple, a part of the said lands and premises so assigned and allotted to the said Morris Croxall as aforesaid, of which said lands and premises so conveyed by the said Morris to the said Garret D. Wall as aforesaid the premises in question are a part, which said deed, duly executed under the hand and seal of the said Morris Croxall, (except the description of the lands and premises therein conveyed, which description is omitted for the sake of brevity,) is in the words following, that is to say:

This indenture, made this thirtieth day of September, in the year of our Lord eighteen hundred and twenty-five, between Morris Croxall, of Belvidere, in the county of Warren and State of New Jersey, of the first part, and Garret D. Wall, esquire, of the city of Trenton, in the said State, of the other part, witnesseth, that the said party of the first part, for and in consideration of the sum of six thousand dollars, lawful money of the United States, to him in hand well and truly paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented, and paid, hath given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, enfeoff, convey, and confirm, unto the said party of the second part, and his heirs and assigns forever, all and singular the following described lots, tracts, or parcels of land and premises, being a part of the share distinguished in the division of the Belvidere estate as number four, and allotted in said division to the said Morris Croxall, and which was released to him by deed of quitclaim bearing date on the fifteenth day of March, A. D. 1823, from Thomas Croxall and the other heirs and claimants of said estate. The first thereof, situate in the township of Oxford, in the said county of Warren (late Sussex) and State of New Jersey aforesaid, being a part of the lot marked in the plan of the said division number eight, and which was likewise released to the said Morris Croxall by deed of quitclaim bearing date on the eleventh day of March, A. D. 1823, from Charles Croxall and Mary, his wife, and Peter Gordon, her trustee, and which is bounded and butted as follows:

63 (The description is here omitted for the sake of brevity.)

The second tract or lot, likewise situate in the said township of Oxford, in the town of Belvidere, in the said county of Warren (late Sussex) and State of New Jersey aforesaid, called the New House lot, distinguished in the plan of the division aforesaid as number two, and bounded as follows:

(Description omitted for sake of brevity.)

The third tract is situate in the township of Knowlton, in said county of Warren (late Sussex) and State aforesaid, being a part of a tract called the White Rock farm, distinguished in the plan of the division as lot number thirteen, and which is butted and bounded as follows:

(Description omitted for sake of brevity.)

Together with all and singular the buildings, improvements, ways, woods, water-courses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof; and also all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of him, the said party of the first part, of, in, and to the said premises and appurtenances, and every part and parcel thereof. To have and to hold

the lots, tracts, or parcels of land, hereditaments, and premises hereby granted, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said Morris Croxall, the party aforesaid, of the first part, for himself, his heirs, executors, and administrators doth hereby covenant, promise, and grant to and with the said Garret D. Wall, the said party of the second part, his heirs and assigns, that at the time of the execution hereof he, the said party of the first part, is seized in his own right of an absolute and indefeasable estate of inheritance in fee simple of and in all and singular the premises hereby granted, with the appurtenances, and hath good right, full power, and sufficient authority in the law to grant, bargain, sell, and convey the same unto the said party of the second part, his heirs and assigns, forever, according to the true intent and meaning of these presents; and also that it
64 may be lawful for the said party of the second part, his heirs and assigns, at all times and forever hereafter, peaceably and quietly to have, hold, and occupy, possess and enjoy the said premises, with the appurtenances, and every part and parcel thereof, without the lawful let, suit, eviction, hindrance, interruption, or disturbance of the said party of the first part, his heirs or assigns, or any other person or persons whomsoever lawfully claiming or to claim the same; and that the said premises are free and clear, and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions, and of and from all other incumbrances whatever; and, lastly, that he, that the said party of the first part, and his heirs, all and singular the lands, hereditaments, and premises hereby granted, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said party of first part, and his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

And that the said sum of $6,000 was the full value of the said lands conveyed by the said deed, at the time of the making of the said deed; and that the said Charles Croxall afterwards, and after the death of the said Mary, to wit, on the 30th day of September, in the year 1825, by a deed duly executed under his hand and seal, between him, the said Charles Croxall, of the first part, and the said Garret D. Wall of the second part, for the consideration of the sum of $410 therein expressed, did remise, release, and forever quitclaim unto the said Garret D. Wall and his heirs, all the estate, right, and title of the said Charles Croxall in the whole of the said two tracts of land set out and described in the said deed tripartite between the said Robert Morris of the first part and the said Charles Croxall and Mary, his wife, of the second part, and said Robert Morris, junior, Adam Hoops, and Aaron Dickinson Woodruff of the third part, which deed is in the words following, that is to say:

This indenture, made this thirtieth day of September, in the year of
65 our Lord one thousand eight hundred and twenty-five, between Charles Croxall, of Belvidere, in the county of Warren and State of New Jersey, of the first part, and Garret D. Wall, of the city of Trenton and State aforesaid, of the second part, witnesseth: Whereas Robert Morris, esquire, late of Philadelphia, deceased, by a certain indenture tripartite made on the fifteenth day of November, in the year of our Lord one thousand seven hundred and ninety-three, between the said Robert Morris of the first part, the said Charles Croxall and Mary Croxall, his wife, of the second part, and Robert Morris, jun'r, Adam Hoops, and Aaron D. Woodruff, esquires, trustees of the said Charles and Mary Croxall, of the third part, did grant, bargain, sell, and convey to the said trustees, for the use and

behoof of the said Charles Croxall and Mary, his wife, and the heirs of their bodies, two certain tracts of land in the county of Sussex (since Warren) and State aforesaid, since called the "Belvidere estate," one of which tracts, consisting of four hundred and sixty-four acres and a half acre of land, is situate at Belvidere, in the county aforesaid, and the other tract, called the White Rocks Place, is situate in the township of Knowlton, in the county aforesaid, and contains one hundred and fifty acres, more or less, as by the said deed, recorded in the secretary's office at Trenton, in Liber A R of Deeds, folio 315, more fully appears. And whereas, by virtue of sundry proceedings and conveyances in the law, all the estate and interest of the said Charles Croxall became vested in the said Mary Croxall, and by certain other proceedings and conveyances all the trust estate of the abovenamed trustees became vested in Peter Gordon, esq., his heirs and assigns, in trust for the said Mary Croxall according to the intents and purposes of the said deed of the said Robert Morris. And whereas, by other proceedings and conveyances, and by an act of the legislature of the State of New Jersey, passed on the fourteenth day of February, in the year of our Lord eighteen hundred and seventeen, the said two tracts of land were divided into four equal shares or parts, between the four children of the said Charles Croxall and Mary, his wife, which said act of the legislature required the said Charles and Mary Croxall to be secured in an annuity of two thousand dollars per annum by her said children, in manner
66 satisfactory to her said trustee, Peter Gordon. And whereas, on the fifth day of March, in the year of our Lord one thousand eight hundred and nineteen, Thomas Croxall, Daniel Croxall and Anna Maria Le Grand, wife of Claudius F. Le Grand, three of the children of the said Charles Croxall and Mary, his wife, secured their respective portions of the said annuity in manner satisfactory, as aforesaid, to the said Peter Gordon, trustee, and thereby created a lien on their several and respective shares of said two tracts of land for the benefit of the said Charles Croxall and Mary, his wife, during their natural lives. And whereas Morris Croxall has since received his share of the one fourth part of the said two tracts of land, and created in like manner a lien thereon of the one fourth part of the annuity aforesaid for the benefit of his parents, the said Charles and Mary Croxall. And whereas the said Mary Croxall having departed this life, and the said Garret D. Wall having purchased on the nineteenth day of July, A. D. eighteen hundred and twenty-four, the respective shares of the said Thomas Croxall and the said Daniel C. Croxall of the said two tracts of land, and having on the date of this indenture purchased the share of the said Anna Maria Le Grand, and also on the 30th of September, A. D. 1825, further purchased certain portions of the share of the said Morris Croxall of the said two tracts of land, all of which are particularly described in the several deeds therefor to the said Garret D. Wall: Now, therefore, in consideration of the sum of four hundred and ten dollars to him, the said Charles Croxall, in hand paid by the said Garret D. Wall, party of the second part, before the sealing and delivery of these presents, the receipt whereof he, the said party of the first part, doth hereby acknowledge, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim, unto the said Garret D. Wall, and his heirs, all the estate, right, title, interest, use, trust, claim, annuity, and demand whatsoever, both at law and in equity, which he, the said Charles Croxall, party of the first part, has or might have had, as well in the right of his wife as in himself, of, in and to, or out of all and singular the lands and parcels of lots and premises situate at Belvidere aforesaid, and which are described in the deeds of re-
67 lease by the said Charles Croxall and Mary Croxall, his wife, to the said Thomas Croxall, Daniel C. Croxall, and Anna Maria Le Grand,

dated the 5th day of March, A. D. 1819, respectively, and which have since been sold and conveyed to the said Garret D. Wall, and also to such portion of the share of the said Morris Croxall as is described in the deed of the said Morris Croxall, dated September the thirtieth, A. D. 1825, unto the said Garret D. Wall, so that neither he, the said Charles Croxall, his heirs or assigns, or any other person or persons in trust for him or them, or in his or their name or names, or in the name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatsoever, hereinafter have, claim, challenge, or demand any annuity, right, title, or interest, property, claim, and demand of, in, to, or out of the same, or any of them, or any part thereof, situate and described in the respective deeds as aforesaid; but that he, the said Charles Croxall, his heirs and assigns, and every of them, from all annuity, estate, right, title, interest, property, claim, and demand of, in, to, or out of the said two tracts of land, and the parcels of lands and premises, or any of them, or any part thereof, except the farm called the New Ground farm, which is the residue of the share of the said Morris Croxall, not included or mentioned in the deed of the said Morris Croxall, dated the 30th day of September, 1825, to the said Garret, and which is reserved and retained to and by the said Charles Croxall as it was before the signing of these presents, are, is, and shall be, by these presents forever excluded and debarred.

In witness whereof, he, the said Charles Croxall, party of the first part, hath hereunto set his hand and seal the day and year first above written.

(Signed) CHARLES CROXALL. [L. S.]

Recorded October 5, 1825.

That the said Garret D. Wall paid for the said several parcels of land and premises, respectively, so conveyed to him as aforesaid, the full value thereof, respectively, at the time of the making of said several conveyances so
68 made to him as aforesaid, and that the same has, since the said Garret D Wall purchased the same, been greatly improved and increased in value, by reason of improvements put thereon by the said Garret D. Wall and purchasers from him.

That the said John M. Sherrerd, the defendant in this case, acquired title to the premises in question by a purchase thereof from the said Garret D. Wall, who, by a deed of bargain and sale, duly made and executed by the said Garret D. Wall to the said John M. Sherrerd, bearing date on the 5th day of January, in the year 1827, for the consideration of the sum of twenty-five hundred dollars, by him paid to the said Garret D. Wall, did grant, bargain, and sell the said premises in dispute in this cause to the said John M. Sherrerd in fee simple, being a part of lot No. 2, so allotted and assigned to the said Morris Croxall; which said deed of conveyance is in the words following, to wit:

"This indenture, made this fifth day of January, in the year of our Lord one thousand eight hundred and twenty-seven, between Garret D. Wall, esq., of the city of Trenton, in the county of Hunterdon, and State of New Jersey, party of the first part, and John M. Sherrerd, of Belvidere, in the county of Warren and State aforesaid, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of two thousand five hundred dollars, lawful money of the United States, to him in hand well and truly paid by the said party of the second part before the sealing and delivery of these presents, the receipt whereof he, the said party of the first part, doth hereby acknowledge, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said party of the second part, his heirs and assigns, all that certain lot of land and premises

situate in the town plot of Belvidere aforesaid, and is butted and bounded as follows, to wit: Beginning at a stake near an apple tree, inside of the present fence, also a corner of Greenwich and Second streets, and runs thence along Greenwich street, inside of the present fence, north seven degrees and an half east, four chains and seventy-five links, to a stake, within eighty-eight feet of Greenwich and Front street corner; thence south eighty-
69 seven degrees west, four chains and seventy-one links, to a stake in the field, also eighty-eight feet from Front street; thence south three degrees east, four chains and sixty-six links, to a stake in the line of Second street; thence along Second street north eighty-seven degrees east, three chains and eighty-five links, to the place of beginning, and containing two acres of land, together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, and also all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of him, the said party of the first part, of, in, and to the said premises, with the appurtenances. To have and to hold the said lot of land, hereditaments, and premises hereby granted, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of him, the said party of the second part, his heirs and assigns, forever. And the said Garret D. Wall, party aforesaid, of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and grant to and with the said John M. Sherrerd, party of the second part, his heirs and assigns, that at the time of the sealing and delivery hereof he, the said party of the first part, is seized in his own right of an absolute and indefeasable estate of inheritance in fee simple of and in all and singular the premises hereby granted, with the appurtenances, and hath good right, full power, and sufficient authority in the law to grant, bargain, sell, and convey the same unto the said party of the second part, his heirs and assigns, forever, according, to the true intent and meaning of these presents; and also that it shall and may be lawful for the said party of the second part, his heirs and assigns, at all times forever hereafter, peaceably and quietly, to have, hold, use, occupy, possess, and enjoy the said premises, with the appurtenances, and every part and parcel thereof, without the lawful let, suit, eviction, interruption, or disturbance of the said party of the first part, his heirs
70 or assigns, or any other person or persons whomsoever, lawfully claiming or to claim the same; and that the said premises are free and clear, and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions, and of and from all other incumbrances whatever; and, lastly, that he, the said party of the first part, and his heirs, and all and singular the said lot of land, hereditaments, and premises hereby granted, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said party of the first part and his heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and forever defend.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

GARRET D. WALL. [L. S.]

Signed, sealed, and delivered in presence of—

JAMES EWING.

CHARLES EWING.

Recorded January 10, 1827.

And that the said sum of two thousand five hundred dollars was the full value of the said premises at the time of said conveyance.

That the said Garret D. Wall, upon the making of the said several deeds of conveyance to him as aforesaid, immediately entered into possession of the said premises, respectively, under the said conveyances, and that the said John M. Sherrerd, at the making of the said deed of conveyance to him by the said Garret D. Wall, as aforesaid, immediately entered into the possession of the premises in question, as the owner thereof, and has hitherto occupied and possessed the same; and that for one year prior thereto he had occupied the same as tenant, under the said Garret D. Wall. That possession was obtained by the defendant by a fair bona fide purchase of the lands in question of a party in possession, and supposed to have a legal right and title thereto, and that the said purchase was made of the said Garret D. Wall, by the deed hereinbefore referred to for that purpose, and that
71 the said Garret D. Wall obtained title thereto by virtue of the deeds hereinbefore recited.

That the said deed given by the said Robert Morris, herein first above mentioned and set forth, was duly acknowledged by the said parties thereto, and duly recorded in the office of the secretary of the State of New Jersey, in Book A R of Deeds, page 315, on the 19th day of November, in the year 1793.

That the several indentures, deeds, and mortgages hereinbefore mentioned as having been executed by any married woman or married women, were also severally acknowledged by such married woman or married women respectively, in private, separate and apart from her or their husbands, respectively, according to the requirements of the laws of New Jersey, for passing the estates of married women, as appeared by certificates of the proper officers, respectively, in due form of law endorsed on said indentures, deeds, and mortgages, respectively.

That a demise of the premises in dispute was made by the said Robert M. Croxall to the plaintiff, and that the plaintiff entered thereupon, and was thereupon ousted by the defendant, respectively at the time and in the manner as in the said declaration is for those purposes severally alleged.

That this suit was commenced by declaration duly served on the eighth day of September, in the year eighteen hundred and sixty-three.

But whether or not upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, the said John M. Sherrerd is guilty of the trespass and ejectment within specified, the jurors aforesaid are altogether ignorant, and thereupon they pray the advice of the court, before the aforesaid justice thereof; and if upon the whole matter aforesaid it shall seem to the court that the said John M. Sherrerd is guilty of the trespass and ejectment aforesaid, then the jurors aforesaid, upon their oath aforesaid, say that the said John M. Sherrerd is guilty thereof in manner and form as the said John Den hath within thereof complained against him, and in that case they assess the damages of the said John Den, on occasion of the trespass and ejectment aforesaid, besides his costs and charges by him about his suit in that behalf expended, to six cents, and for those costs and charges to .

But if upon the whole matter aforesaid it shall seem to the said court that the said John M. Sherrerd is not guilty of the trespass and ejectment
72 aforesaid, then the jurors aforesaid, upon their oath aforesaid, say that the said John M. Sherrerd is not guilty thereof in manner and form as he hath within in pleading alleged.

73 And because the court are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid at Trenton, until Wednesday, the ninth day of November next, to hear

the judgment of the said court thereupon, for that the said court are not yet advised thereof, &c. At which day before the said court come as well the said John Den as the said John M. Sherrerd, by their respective attornies aforesaid, and thereupon all and singular the premises being seen, and by the said court now here fully understood, and mature deliberation being thereupon had, for that it appears to the said court here that the said defendant is not guilty of the trespass and ejectment above laid to his charge in manner and form as the said John Den hath above thereof complained against him, it is considered that the said John Den take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. And it is further considered that the said John M. Sherrerd do recover against the said John Den the sum of two hundred and twenty-four dollars and twenty cents for his costs and charges by him about his defence in this behalf laid out and expended by the court here adjudged to him, &c. Judgment signed November 9th, A. D. 1864.

R. C. GRIER, *Dist. Judge.*

74 UNITED STATES OF AMERICA, *District of New Jersey, ss:*

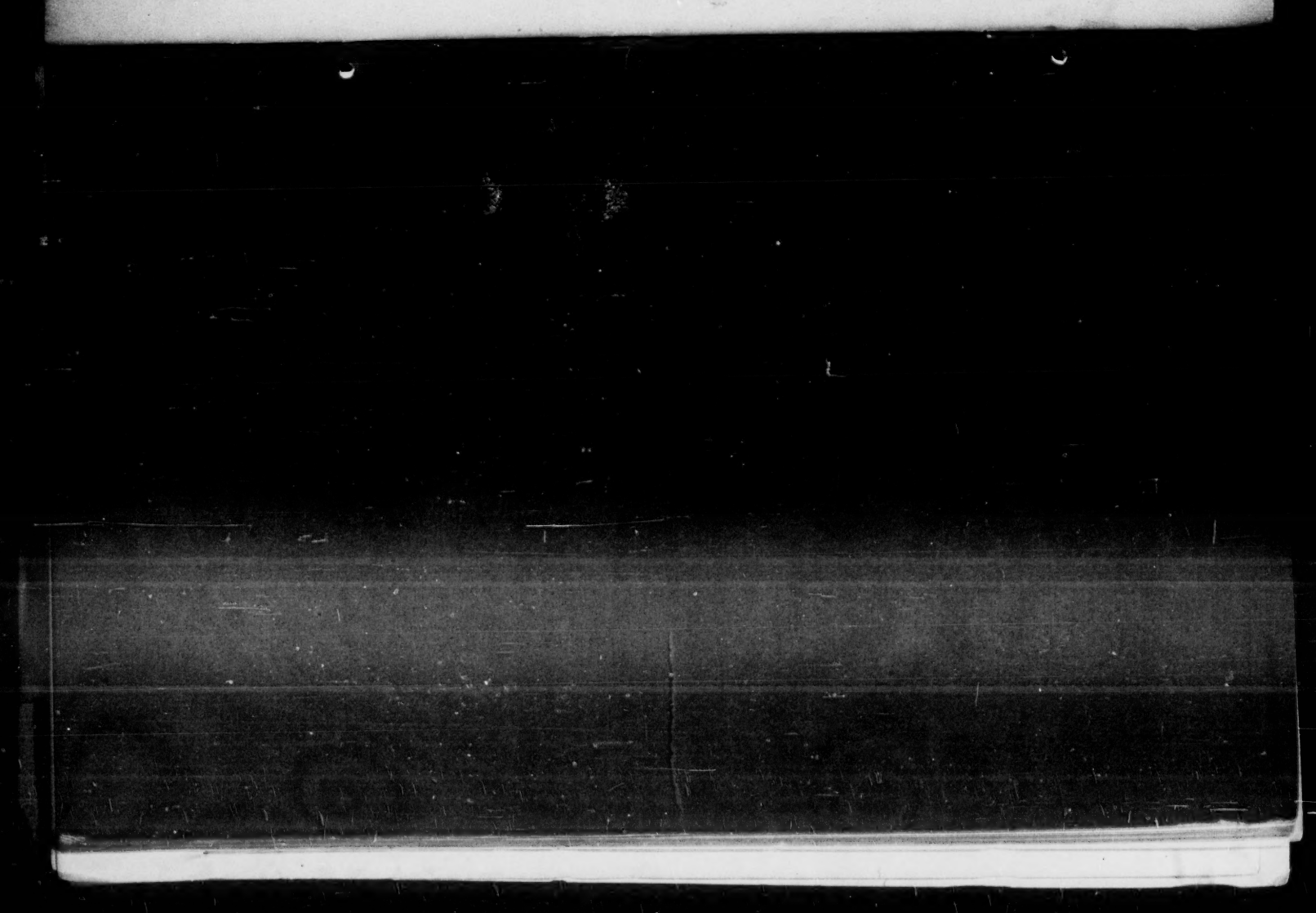
I, Andrew Dutcher, clerk of the circuit court of the United States in and for the district of New Jersey, do certify that the foregoing is a true copy of the judgment and proceedings in the above stated cause as the same remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, this first day of December, A. D. eighteen hundred and sixty-four.

[SEAL.] ANDREW DUTCHER, *Clk.*

Filed December 13, 1864.

REC. 229—6



CROXALL'S LESSEE

vs.

SHERRARD.

SUPREME COURT UNITED STATES.

DEC. TERM, 1866.

BRIEF OF PLAINTIFF IN ERROR.

This action of ejectment was brought to recover a house and lot in the town of Belvidere, New Jersey, which is part of a tract of land described in a deed of settlement, made in 1793, by Robert Morris, the distinguished financier of the American Revolution.

The plaintiff, Robert Morris Croxall, is the great-grandson of Robert Morris, and claims the benefit of that deed of settlement, dated and duly recorded in 1793. Robert Morris settled the property in question by this trust upon his son-in-law, Charles Croxall, for life, and after his death, if his wife survived, then upon his said wife, who was Mary Croxall, the daughter of Robert Morris, for life, and in case of the determination of said life estates, to trustees to preserve contingent remainders, and after the death of the survivor of Charles and Mary Croxall, for the use of the heirs of the body of said Mary by Charles, and the heirs of his, her or their bodies forever, and upon the failure of such issue, to the heirs of said Robert Morris.

Mary Croxall did not survive her husband, but died 6th July, 1824, leaving her son, Thomas Croxall, the heir of her body begotten by Charles, and in whom, as we maintain, the contingent remainder vested at her death subject to the outstanding life estate in Charles Croxall, who did not die until 1831.

2 Sect.

The New Jersey statute of 26th August, 1784, is very peculiar in regard to entails. Instead of abolishing them or enabling the tenant to do so, it provides that the estate tail shall only continue during the life of the first taker who dies seized of the entail as held by the Courts of New Jersey, and the next heir takes performam doni, but takes in fee.

The questions arising on this record will be—

1. Whether, by the deed of settlement, Thomas Croxall was not the first tenant in tail? If so, as he survived until 1861, his son, the plaintiff in error, would inherit the property by primogeniture, taking however a fee, as decided under the statutes of New Jersey.

2. If Mary Croxall, and not her son Thomas, became the first tenant in tail under the rule in Shelly's case, whether as she survived until 1824, and the act of 26th August, 1784, restricting the entail, was itself repealed in her life by the act of 1820, the entail of which she was seized under the deed of 1793, did not continue and pass at her death in 1824 to her son Thomas as second heir in tail, and at his death in 1861, to his son the plaintiff in error, no act of the previous tenants in tail having destroyed the entail.

3. Whether in the absence of a good paper title in the defendant in error, his possession taken and held under the deeds of the tenants of the precedent estates, can operate to bar the plaintiff, whose title performam doni, accrued only in 1861, after the death of Thomas Croxall, the first or second tenant in tail, as he may be held to be.

The deed of settlement is in form a bargain and sale for a nominal consideration, and therefore it raises the *first* use *impliedly* in the trustees, and they took the legal title.—Record p. 6 and 36.

2 Preston's Conveyancing, 482–3.
Cornish on Uses (3 Law Lib.) 64, side.
Act of New Jersey, March 17, 1793. (1 Stal p. 9.)

FIRST POINT.

THE RULE IN SHELLEY'S CASE YIELDS TO THE CLEAR INTENTION OF THE GRANTOR.

Inasmuch as the deed of trust limits successive estates for life to Charles Croxall and his wife Mary, with remainder to the heirs of her body by the said Charles Croxall, it is contended by the Defendant's counsel, that under the rule in Shelley's case, Mary Croxall became the first tenant in tail, while on the other hand we maintain that Mary took but a life estate, vested or contingent, with a contingent remainder to the heirs of her body by Charles Croxall—she dying on the 6th July, 1824, her eldest son Thomas was the first special heir in tail, answering the description. This is one of the most important questions in the case, and if decided in favor of the Plaintiff is decisive of the case, but if decided against the Plaintiff, he still claims to recover on other grounds to be hereafter explained.

The rule in Shelley's case was not adopted with a view to gratify the intention of the *settlor*, but it was adopted from feudal considerations, to

merge the life estate in the inheritance, and it frequently if not always disregarded and annulled the intention, however clearly expressed, to give a life estate only to the ancestor. Lord Mansfield clearly shows that the rule arose from feudal considerations. 2 Burrows, p. 1106.

That this was the origin and reason of the rule appears by all the writers on it, especially by reference to

1 Preston on Estates, ~~171-2 and 275~~. 272

~~1 Preston on Estates, 225, side.~~

And Mr. Preston in the most decided manner condemns the rule because it is subversive of the intention.

1 Preston on Estates, 300 ~~and 301~~.

He shows that Lords Mansfield and Hardwick, and Mr. Justice Buller, had *boldly* undertaken to free the clear intention of the grantor from the shackles of the rule, and to restrict the estate of the ancestor to *life*, when such intention appeared on the construction of the whole instrument.

1 Preston on Estates, 272.

And the Supreme Court of the United States have not only approved Mr. Preston's remarks on the rule in Shelley's case, and unanimously condemned it as originating in a policy now obsolete, but have emphatically declared their purpose to respect the lawful intention of the donor in all instruments, regardless of any opposing rule of law, however ancient.

Linn vs. Shriver. 2 Howard Rep. 55.

Although this was a will its reasoning applies

This decision of the Supreme Court has settled the question in all the United States courts, and being pronounced ex-cathedra as a canon for the construction of *all instruments*, it cannot be controlled by the opposing decisions of any State court whatever, as fully declared in

Lane vs. Vick, 3 How. 476.

In Watson vs. Tarpley, 18 Howard, p. 520, the Supreme Court expressly declare that they will not be bound by State decisions "in the construction of ordinary contracts or other written instruments;" and in same case they hold that they will for themselves "ascertain the true exposition of the contract." We consider this case to involve simply the construction of a deed resting on general principles of law where no local statute or custom can be *considered*.

Lord Ellenborough had also announced the same rule of construction, and declared his purpose to overrule the technical signification of the words

"heirs of the body," by respecting the intention of the *settlor* when it clearly appeared. See 11 East. 670.

In 10 Peters, 564, Beverly vs. Peter, the Supreme Court overruled another settled English rule, making it yield to the plain intention of the donor.

The last decision in New Jersey seems to declare the intention to be paramount to the rule.

5 Dutcher, 185.

And there is nothing against this view in

McGinnis vs. McPeat, Pennington's Rep. p. 297.

See also 3. Md Rep 344.

The only objection to Hardwick's decision in Bagshaw & Spencer was, that he respected the intention in case of a trust executed.

See 1 Saunders's Uses, 281, notes. Brown's Rep. 206.

As the Supreme Court in 2 How. 55, refer approvingly to the opinions of Mansfield, Hardwick and Buller, we beg leave to call attention specially to the masterly arguments of these great judges, fully reported in

2 Burrows, 1107.

2 Atkyns, 578–9.

2 Vesey, 655.

Judge Buller, in 1 Douglass, 345, explains the great case of Perrin & Blake, and denies it as authority, for the reason that it was substantially decided by a court equally divided on the question whether the intention or the rule should be preferred. And we beg leave to refer to the special and clear report of that case in

4 Burrows, 2579.

To which we add the decision of Lord Ellenborough, to the effect that the expression "heirs of the body," being prima facie words of limitation, "may be explained in the instrument to mean words of purchase, and will be so construed if the donor appears to have used them in that sense."

11 East. 679–1.

See the able review of Mr Burke in his Domestic Relations 608–621

The more modern decisions in England seem to have adopted this view of the rule in Shelley's case. (See Poole vs. Poole, 3 B. & P. 627. No writer or judge ever questioned Lord Hardwick's argument in Bagshaw & Spencer to establish the intention of the donor on the facts of that case, which are analogous to ours—the objection made was because Lord Hardwick respected the intention. We thus embark on this inquiry, instructed

by the court in the last resort to steer our course by this polar star of intention. If we find in this deed clear and irrefragable evidences of the intention of Robert Morris to limit only an estate for life to Mary Croxall, and a contingent remainder to her heirs special, then this court cannot exalt the rule in Shelley's case, for the purpose of making war on this lawful and manifest intention.

No one denies that Robert Morris could, without violating any rule of law, have settled his property on his daughter for life, with remainder to the heirs of her body as purchasers. If he had limited his remainder to such child of Mary Croxall, as would be her heir at common law at her death, and to the heirs of the body of that child, no one would doubt that Thomas Croxall would have taken as purchaser, being her heir at common law.

In Archer's case, 1 Coke's Reports, 66, it was held that a remainder to "the heir (in the singular number,) and the heirs of his body," would make him take as purchaser. If so, what is the practical difference under this deed, since it is held in New Jersey, that a limitation to the "heirs of the body" give the estate by primogeniture to the eldest son?

See 1 Harrison's Report, 176–7.
" " " 292.
Pennington's Report, in 1 vol. 1022.

And so it would be in England, if the words "heirs of the body" signify that the heirs take as purchasers.

8 T. Report, 516.

Then as these words "heirs of the body," practically mean "heir of the body" in the singular number," and there are words of superadded limitation "to the heirs of his, her or their bodies," it comes within the principle of Archer's case, and makes Thomas Croxall the first heir in tail, and his mother Mary but a tenant for life, because the superadded words carry the estate in a different course from what it would otherwise go; for if Mary Croxall took the entail under the law as it stood in 1793, it went by the act of 1784 to her son Thomas in fee, but if the words of superadded limitation are to have effect, the deed carries the estate to the heirs of the body of Thomas, as in Archer's case.

1 Fearne, 141.
2 Burr, 1108.
1 Prest Est 382-3 & 353

In Archer's case, it was adjudged that the tenant for life, could destroy the contingent remainder to the heir, by forfeiting the life estate before the contingency had occurred. Hence the origin of the limitation to trustees

to preserve contingent remainders, and which always requires a legal estate in the trustees, until the remainder has vested.

Fletcher, trustee, (10 Law Lib.,) 28 side.
2 Denio's report, 16.
2 Atkyn's, 578–9.
2 Vesey, 655.
Willis' Trustees, (10 Law Lib.) 151 side.
Lewin Trustees, 254.
Hill on Trustees, 235.

Lord Hardwick considered that nothing could be clearer to show the intention of the donor, than the interposition of such trustees in Bagshaw and Spencer. First, because in that case as in ours, the trust was expressly to preserve the *usufruct* to the tenant for life, even after forfeiture or other determination of the life estate. Secondly, because there as here, the trust was to preserve contingent remainders, and there was no contingent remainder but that limited to the heirs of the body of the ancestor. Our case is precisely similar, as the ultimate limitation for failure of issue to the right heirs of Robert Morris, is no contingent remainder, but the old reversion dependent on the estate tail.

Baldwin vs. Garth.
2 Vesey, Sr., 655.

There are three cases in England, which decided that trustees to preserve contingent remainders, did not exclude the rule in Shelley's case.

The first case was Coulson vs. Coulson, very imperfectly reported in
2 Strange, 1125.

The second is Hodgson vs. Ambrose, 1 Douglass, 341, where all the Judges reluctantly decided the question on the authority of Coulson vs. Coulson.

The third was, Papillion and Voice, reported in 1 Fearne, p. 146 and 161, where the court made as admitted, a contradictory decision, as to the intention of the testator on the same words in the same will, because of the distinction between trusts executed, and executory, and on that distinction they followed intention in the former case, and rejected it in the latter; because the intention in all cases of executed trusts was smothered by the rule in Shelley's case.

2 Denio's report, 16, fully decides that such a limitation to trustees, conclusively proves the intention in all cases, to give the heir the contingent remainder as a purchaser. See fully on this point Reeves' Domestic Relations, p, 464, 465 and 480. This authority clearly shows that the intention will control the rule in a deed as well as a will.

Could anything in reason be regarded as clearer evidence of the intention of Robert Morris, to give his daughter but a life estate, than the provision that the trustees are to preserve the property for her use and benefit, after her life estate is determined (meaning by forfeiture) in her life time, and thus re-enacting as to her life estate the same provision which he had before inserted in regard to the life estate of her husband?

Could anything be more conclusive to show that he intended the special heirs of the body of Mary, by Charles Croxall, to take the contingent remainder as purchaser, than the clause to preseve contingent remainders when there are none in this deed to preserve, if the limitation to such "heirs of her body" be not the one in the mind of the donor, to preserve against the acts of the tenant for life, who had otherwise power to destroy the remainder as ruled in.

Archer's case, 1 Coke's report, 66.

Surely it is "juggling with words," and "paltering with us in a double sense," to contend that Robert Morris, by all these provisions as well as by the recital of his purpose "to make a settlement," in that deed, did not mean to give Mary but a life estate, with contingent remainder in fee tail, to such person or persons as should prove at her death, to be the heir or heirs of her body begotten by Charles Croxall.

If then, his intention as expressed in the deed is to prevail, and there is no rule of law strong enough to neutralize that intention, it is clear that he has used apt and proper words to signify that intention, and this is all that is required even where the rule in Selley's case has been most stringently adopted.

Ware vs. Richardson, 3 Md. report, p. 553.

In addition to all this, Robert Morris has given the estate to Mary, by the same precise words as to Charles Croxall, and as Charles confessedly took only a life estate, so must Mary.

In fact, Mary had no separate estate, and could have none during the life of her husband, and therefore, she only had a remainder for life contingent on her surviving him, and as she died first, she never had a vested estate.

2 Blackstone's report, 1214.

2 Blackstone Com 171. & 1 Prest Co

To apply the rule, the ancestor must have a vested estate of freehold in possession or remainder, and this is conceded by all the writers.

Now could Mary have a vested estate for life under this deed, when the whole grant to her depends on the condition of her surviving her husband,

during whose life she cannot take any separate estate in remainder or otherwise, as above decided?

If Robert Morris had expressly declared his meaning to be that Mary Croxall should take a life estate only, with a contingent remainder to the heirs of her body who should take by purchase and not by descent, would any one now deny that the will of the donor must prevail; and if so, has he not created an express life estate liable to forfeiture in Mary Croxall, by the same words as in Charles Croxall, and has he not created an estate in trustees expressly to preserve the usufruct in the tenants for life, after their estates are determined, and to protect the only contingent remainder created by his deed in favor of the "heirs of the body" of Mary, by Charles.

Could any words be used to signify more clearly the intention of the donor, than the nature and qualities of the estates he has expressly created—all predicated on the idea of Mary Croxall taking but a life estate.

SECOND POINT.

THE RULE IN SHELLEY'S CASE INAPPLICABLE TO THIS SETTLEMENT.

All the authorities in England and America unite in excluding the rule in Shelley's case, where the estates limited to the ancestors and his or her heirs general or special are not both legal or both equitable. If, therefore, Mary Croxall took by the provisions of the deed an equitable estate only, while the heirs of her body take a legal estate, or one executed by the statute of uses, then there is an end of the rule in Shelley's case, and the heirs of her body take a legal remainder under the statute of uses, so soon as the heir special is ascertained by her death.

1 Prest. Estate, 322.
1 " " 372.
2 Denio Rep., 16.
Tudor's Leading Cases, on Real Property, 484–5.
Ware vs. Richardson, 3 Md. Rep., 505,

That the trustees took a legal estate during the life of the survivor of Charles and Mary Croxall is not only conceded by the argument of our adversaries, but is established by the limitation to them to preserve the *usufruct* to Charles and Mary after the determination of their life estates

by forfeiture, and by the fact that a limitation to preserve contingent remainders always calls for a legal estate in the trustees.

(10 Law Lib.,) Fletcher on trustees, 28 side.
" " Willis on trustees, 149, 150 and 151, side.
Lewin trusts, 254.
Hill, trustees, 235.

See especially - 2 Dewis 17. Tho & Beames 489.

The deed itself draws a distinction in language and expressly declares "that after the determination of the successive life estates the trustees are to hold in trust, &c.," and after the death of the survivor of Charles and Mary, "then to the use and behoof of the heirs of her body by Charles."

This last use repeals all other previous uses express or implied, and vests from that event in the trustees the whole title for the single use thereafter expressed, and this is an executed use transferring the legal title to the heirs special under the plain import of the New Jersey statute of uses.

See act, 17 March, 1713. 1 Stat, p. 9.

2 Dewis p. 17. Tho & Beames 489. / 3 Md R. 554. 542

We therefore confidently maintain that inasmuch as the trustees take a legal title during the lives of Charles and Mary Croxall and the survivors of them, that the remainder then limited to the heirs of the body of Mary by Charles is an executed use in remainder, which being a legal estate will not coalesce with the equitable freehold limited to Mary Croxall the ancestor.

5 East, 171.

And we especially refer on this point to the case of Ware and Richardson, in 3 Md. Rep., 546 and 554, where the Maryland Court of Appeals construed a deed of trust, so as to escape the force of the rule by the different qualities of the limitations in favor of the ancestors and those in favor of "her legal heirs;" and in pages 553–4, the Court say that to effectuate the intention of the grantor they will construe the deed as a feoffment and not a bargain and sale, and thus vest a legal title by way of remainder in the heirs of the tenant for life.

The Court will appreciate the force of this decision the more when it recognizes the rule in Shelley's case as fully in force in Maryland in all its rigors, but escapes its application because the ancestor took an equitable estate for life, and her heirs a legal remainder.

And it will be seen by reference to 3 Md. Rep., p. 509, that Judge Legrand, in deciding the case at *nisi prius*, took the very points which are relied upon in the present case by the defendant's counsel, but he was overruled by the Court of Appeals.

It being conceded then throughout the ~~case~~ argument that Mary Croxall had but an equitable estate, the decisive question remains whether the trustees continued to hold the legal title at and after the death of the survivor of Charles and Mary Croxall.

We maintain that notwithstanding the legal title is conveyed to the "trustees and their heirs," yet if there was no object to subserve by continuing the title in them after the contingent remainder had vested, the legal title will be executed under the statute of uses, and this whether the limitation is found in a deed or will.

7 T. R. 342

12 Ves. 89.
1 Bro. Ch. R. 75.
(10 Law Lib.) Fletcher trustees, 50 side p.
6 Ad. and Ellis, N. S., 865.
19 Beavan, 207.
1 Barn. and Cress., 336—342.
4 Mees. and W., 421.
7 T. R., 433.

1 Prest Est 168

Tudors Leading cases 270.

Otherwise the trustees would take a legal estate in perpetuity when the exigencies of the trust do not require it longer than the life of the surviving life tenant. Even conceding that the legal fee granted to the trustees and their heirs will not be cut down to an estate commensurate with the purposes of the trust; yet in our case it will be noted that from and after the death of the survivor of Charles and Mary Croxall, the deed declares that thence the trustees are to hold the estate "*to the* use of the heirs of the body," &c. This is a *single use*, and as such clearly executed by the statute, and the heirs indicated take a legal title in remainder as in

Ware vs. Richardson, 3 Md. Rep.

THIRD POINT.

THE CONTINGENT REMAINDER VESTED IN THOMAS CROXALL AS FIRST TENANT IN TAIL ON 6th JULY, 1824.

If, then, we have established the validity of the limitation to the heirs special of the body of Mary Croxall as a contingent remainder, the result is that it vests *eo instanti*, that Mary died 6th July, 1824.

Record, p. 8.

1 Prest Est 177

Although the limitation is to "the heirs of her body" in the plural number, it goes to her heirs at common law, and not to her children.

8 Term. Rep. 516–17.

The statute of New Jersey regulating descents has only changed the common law, and abolished primogeniture in cases where the ancestor died seized in fee, which Mary Croxall certainly did not.

2 Pennington, 1022, per Reporter.
1 Harrison's Rep., 176–7.
" " " 292.
Act of 29th Jan. 1817, 1 Stat. 608.

It results that in 1824, the contingent remainder vested as at common law by the death of Mary Croxall in her eldest son Thomas, and he then took the first estate tail, expectant on the death of his father, Charles Croxall, who survived until 1831.

Crane vs. Fogg, 2 Pennington R., 821–3.
See Record, p. 8.

We confidently maintain that the estates created by this deed of 1793, vested in the donees as they successively arose, according to the law as it stood at its date in 1793.

At that date the statute de donis was in force in New Jersey, but modified by the restraining act of New Jersey of 26th August, 1784, as decided by the courts of New Jersey.

2 Pennington R., 825.

Nor did the repeal of the statute de donis in 1799, after the deed had been executed and the estates created by it had vested, divest the entail, as it was sanctioned by the act of 1784. This is the adjudicated construction of the State statute by the courts of New Jersey, and it is binding on the courts of the United States.

See repealing Act 1799, 1 Statutes, p.
1 Harrison's Rep., 172.
2 Pennington, 825.
1 Harrison's Rep., 297.

It is true that both the statute de donis and the act of 1784 were repealed, the latter being repealed in 1820, before the contingent remainder had

ANALYSIS OF DEFENDANT'S DERAIGNMENT OF TITLE.

1798, 26th June, Charles and Mary Croxall (tenants for life) convey for five shillings, the two tracts mentioned in the deed of settlement to James and William Gallahan, during the lives of Charles and Mary Croxall.

Record, p. 8 and 9.

This deed was on its face but a mortgage of these life estates, with a provision that on the payment of certain debts and charges, the property was to be reconveyed to Mary Croxall.

11th July, 1804, the Gallahans reconveyed the property in dispute to Mary Croxall for her life.

Record, p. 9 and 10.

Dec. 1st, 1807,—the Court of Appeals of New Jersey decreed that upon the payment of certain monies to them, the Gallahans should convey to Mary Croxall and her heirs such rights in all said property, (that included in Morris' deed of settlement,) as they hold, and such conveyance was made.

Record, p. 10 and 11.

This history seems to vest all Charles and Mary Croxall's life estates, finally, through the Gallahans, in Mary Croxall.

1st July, 1814, Charles and Mary Croxall, after reciting the conveyances aforesaid to Mary Croxall, including a title derived from James Hyndshaw, sheriff, under a sale of Charles Croxall's life estate in the Belvidere estate, convey to Thomas and Daniel Croxall, the one-half of all the estate thus vested in Mary Croxall, and which we have already shown was but a life estate.

Record, p. 11—14.

9th May, 1808, the sheriff sells all Charles Croxall's estate in said lands to McCullough, who conveyed on 17th May, 1808, to George H. Milnor, and on 18th May, 1808, Milnor conveyed the same to Aaron Dickenson Woodruff, Peter Gordon and Jonathan Rea, (except certain lots, and which exception does not include the property in dispute,) in trust to secure the same to Mary Croxall during her life, and at her death to the uses limited by the deed of trust from Robert Morris aforesaid.

483 Record, p. 16.

We cannot perceive why this devolution of title to the life estates vested in Charles and Mary Croxall, is made to load the Record, inasmuch as it cannot affect the inheritance claimed by the plaintiff.

Woodruff and Rhea having died, Peter Gordon became the sole trustee for the benefit of Mrs. Mary Croxall in the Milnor deed aforesaid. All the four children of Charles and Mary Croxall had reached their majority in 1820.

Record, p. 16.

In 1818, when Thomas Croxall had no title whatever, but that derived to him and his brother Daniel as aforesaid, for the one half of his mother's life estate, he filed a petition to the Legislature for a division of the estate.

This petition is vaguely and obscurely drawn, but seems to claim that Charles and Mary Croxall had a life estate, and the fee vested in their children, who were at variance and had lawsuits, wherefore a division is prayed.

Record, 16 and 17.

The other children, and Charles and Mary Croxall, answered this petition, "admitting that the property by said deed was, at the death of Mary Croxall to be divided among the children equally."

Also "admitting that in 1814 a deed was given by Charles and Mary Croxall to Thomas and Daniel Croxall for half the Belvidere estate," then follows charges of fraud against Thomas Croxall, and a prayer that the division be not made.

Record, 17 and 18.

It is thus manifest that the Legislature were never shown the deed of settlement of 1793, but the tenants for life and their children all agree in imposing on the Legislature a misrepresentation of the limitations of that deed which gave none of the parties any interest in those lands beyond a life estate. In 1818 the remonstrance was withdrawn, and by consent of said parties the private act was passed for the division of said estate among the four living children, based upon the false recital in the act that by the deed of settlement the estate was limited "to Charles and Mary for life and after their decease to the heirs of their bodies," which would clearly give them if such had been the limitation, a vested estate in fee or in tail, and not merely a life estate as they really had by that deed. This special act is manifestly predicated on the consent of Charles and Mary Croxall, the supposed owners of the inheritance.

Record, 18 and 19.

The 3d Section prohibited the division being made until, as a condition precedent, the annuity of $2,000 was first secured to Mary Croxall in the manner mentioned, and which was never done.

In 1818 (Dec. 7) the Commissioner made the division between the four children.

Record, 20.

The premises in dispute are part of lot No. 2, allotted to Morris Croxall.

Record, 21.

This partition was ratified, and releases executed in 1819, by all the children, except Morris, and by Charles and Mary Croxall.

Record, 21.

This ratification and release recites the deed of settlement and proceeds on the same misrecital of its provisions as the act of the Legislature did, and it proceeds by way of quit claim to release each part interchangeably.

Record, 21–23.

Morris Croxall having attained his full age in 1821, he became a party to the ratification and releases by quit claim in March, 1823, which also misrecites the limitations in the deed of 1793, on which it professes to be based.

Record, p. 24.

The special verdict finds that Mary Croxall, a feme covert, reserved the use of certain property in lieu of the annuity required by said act to be paid to her, thus frustrating the wise conditions required by the Legislature, and placing the interests of the mother feme covert at the mercy of her husband and children, and her ability as a feme covert to accept satisfaction by agreement, and we shall contend that it was not competent for the feme covert to waive the condition precedent on which alone the law was to take effect, and therefore the partition was a nullity. under the Act

All these deeds of release and quit claim set forth the false recital, that all the legal title vested in the trustees in the deed of 1793, had been passed to Peter Gordon, who joins in the deeds.

Record, p. 22.

" " 24.

It is thus manifest that the whole scheme of this Legislative act and the partition under it, is based on misrecital and misrepresentation of the deed of settlement and its intention, and that the parties thereto are all

chargeable with express notice of that deed by the references made thereto in all the proceedings.

Every party to this partition and the Legislative act, is chargeable with express notice of the deed of 1793.

3 How. 409.

The same objections apply to the mortgage deeds executed by Thomas Croxall to Garrett D. Wall in 1819,

See Record, p. 27 and 28.

So much for the acts of the parties antecedent to the death of Mary Croxall on the 6th July, 1824.

There is nothing to give them a color of title, unless we are wrong in our construction of the deed of 1793, or the private act confers title, by taking A's property and giving it to B., which we will more fully consider hereafter.

Thomas Croxall, as first tenant in tail, could not bar his issue even by common recovery, since the act of New Jersey abolishing fines and recoveries.

June 12, 1799, 1 Stat. p.

His deed to Wall after his title as first tenant in tail, accrued by the death of his mother on July 6, 1824, could not operate otherwise than as an assignment to Wall during the grantor's life, and Sherrard became Wall's assignee.

Bacon's Abridg. Title Estate in Tail, D.

This deed is without warranty, but a quit claim deed, and only operates as a deed of release, passing such interest as Thomas Croxall then had, and in no sense could it operate as a discontinuance of the issue in tail.

See the deed in printed Record, p. 28 and 29.
See 2 Thomas Coke, p. 138, top page, and note *g.* 1.
1 Prest. Convey. 236-8.
Seymour's Case, 10 Coke, 95.
Den vs. Clark & Zilcar, 1 Coke's Rep. 359.
Boon vs. Childs, 10 Peters, p. 211.
3 How. 409, 4 Kent Com., p. 7, Prest. Est. 56.

The Plaintiff as issue in tail, does not claim under Thomas Croxall, but per formam doni.

Pennington vs. Ogden, 1 Coxe's Rep., 193.

Of course nothing passed by the deed of Milnor to Peter Gordon and his trustees, because the whole estate of Charles Croxall was then outstanding in the Gallahans, and became subsequently vested in Mary Croxall, as shown by the record, and the recitals in the deed of Mary and Charles Croxall, dated July 1, 1814, (Record p. 10) which deed ignores the Milnor title and shows it was regarded as a nullity.

The partition thus made on March 5, 1819, between the four heirs apparent of Mary and Charles Croxall, is by nothing but deeds of mutual release, which operated only on such title as the releasors then had.

See Deeds, Record 28, &c.
4 Kent's Com. p. 7, side.
2 Prest. Estates, 56.
Co. Lilt. 9 b. 273.
10 Peters, 211.
3 How, 409.
Rawle on Covenants, p. —.

The possession of all this property is thus clearly shown by the defendant in his deraignment of title, to be derived exclusively under the acts and deeds of the tenants for life and their assignees for the deed to the defendant Sherrard, shows that he claimed through his grantor Wall, under the deed of 1793, on which our title is based.

See Wall's warranty deed to Sherrard on the 5th of January, 1827, Record page 34.

And see Charles Croxall's deed to Wall, Sept. 30, 1825, reciting on its face the deed of Robert Morris in 1793, in Record, p. 32.

And see Morris Croxall's deed to Wall, Sept. 30, 1825, referring on its facce to the quit claim of Thomas Morris, Sept. 15, 1823, which last deed recites the deed of Robert Morris, of 1793. Record, p. 31.

Walls warranty deed could not give any right except as against his heirs, See New Jersey Stat.

SIXTH POINT.

THE DEFENDANT IN ERROR, SHERRARD, IS BUT THE ASSIGNEE OF THE LIFE ESTATE OF THOMAS CROXALL, AND HAS ONLY HELD OVER UNDER THAT TITLE SINCE 1861.

It is therefore manifest that Sherrard bought with constructive notice by the recitals in the deed to his vendor of the existence of the recorded deed under which we claim, and though he may, as the verdict finds, have believed himself to have bought a good title, he has such clear notice of our deed as a matter of law, not only by its being duly recorded, but by the recitals in his chain of title, that he cannot be regarded as an adverse possessor.

1 Spencer's (N. J.) R. 493.
3 How, 409.

Nor could the defendant as alienee of all Wall's title as derived under the tenants for life and for the first tenant in tail, Thomas Croxall, be regarded as holding adversely to the next heir in tail, at least until after 1861. Bac. Abr. Estate Tail D.

2 Southard's Sep. 711.
1 Harrison's Rep. 291.
Coxe's Rep. 359.
10 East. 591 and 1 Root 546.
8 Johns. 269

The principle of law is that the alienee of the tenant of a preceden estate holds consistently with the title in remainder or reversion, especially as in the case where Wall, his grantor, held by deeds of release and quit claim, and it would not be different if he held under deeds of bargain and sale. Neither Wall or Sherrard was a disseisor.

3 Thos. Coke, 138—top, paging note *g*, 1.
1 Roscoe on Real Actions, 504–6.
1 Chit. Gen. Prac. 747, note *a*.
1 3 Sug & Rawle 3

A possession originating by a lawful title, will not be presumed adverse as against remainder-man by a silent holding over without a known disclaimer.

Eckerts, lessee, vs. Eckert.
4 How 295.
2 G. and J. 183.

SEVENTH POINT.

THE DEFENDANT IN ERROR IS NOT PROTECTED BY THE NEW JERSEY STATUTE OF LIMITATIONS.

The statute of limitations of New Jersey does not bar our right under the 20 years' limitation, because our title did not accrue until 1861, when Thomas, the first tenant in tail, died. 7th July 1799

The adverse case cited from 7 Eng. Com. Law. Rep. 420, only establishes that an adverse possession of 20 years against the first tenant in tail will bar the next heir, but that does not reach our case, inasmuch as the defendant holds merely as assignee of Wall, who was assignee by deeds of quit claim (or bargain and sale, if you choose,) of the tenants for life, and the first tenant in tail, under our title paper.

Undoubtedly such an assignee cannot set up his possession as adverse, when his grantor held in conformity with and under our title, being in fact only the occupier of a precedent estate.

Nor is our case affected by the 30 years limitation in the New Jersey statute, as will be plainly seen on reference to the class of cases to which it applies.

The case cited from 4 Wash. C. C. Reports in page 24, avoided a decision of any principle applicable to our case, and it proceeded expressly on the 60 years clause. (See page 25.)

EIGHTH POINT.

THE LEGALITY OF THE PRIVATE ACT.

8th Point.—The legality of the private act. It is said, however, that conceding that Thomas Croxall would have been the first heir in tail, yet the Legislature, by the private act authorizing a partition, virtually annulled the entail and invested the heirs apparent with a title where none existed before.

If this be true, then the Legislature not only destroyed the entail created by the grantor, but confiscated the reversion in his heirs at law, and all this on the petition of private parties, some of whom only represented life estates, and others represented not even a "scintilla juris," being but naked heirs apparent.

It is manifest that the Legislature were imposed on by the exparte allegations made in the proceedings which led to the enactment of this private act.

The petition of Thomos Croxall alleged that he had a fee simple interest, which was wholly unfounded.

The protest of the other parties erroneously asserts that the property belonged by the deed to the children at the death of Mary.

The parties protesting withdraw their opposition, and the act for a division of Belvidere passed in the words found in Record p. 18. 1.

This act falsely assumes a clear estate tail in Charles and Mary Croxall, and is based on their assent, they being, according to the assumption in the act, the tenants of the inheritance, and willing that it should go *at once* to their children by an act of partition in consideration of the annuity mentioned. The Legislature by this act use no language to prejudice the rights of third parties, but merely authorize a partition among the parties before them, assuming that they represented a vested inheritance. Now, the presumption of law is that in private acts the Legislature only bind the parties before them, and not strangers or third parties, and this act on its face breathes no aggressive spirit towards other parties.

No greater title can be conferred on the parties by a private act, than they possessed before.

Smith's Comment., sec. 815.
Hesse vs. Stevenson, 3 B. and P., 578.

Private acts passed on petition of parties to be construed merely as private agreements.

Smith's Comment., sec. 815.
8 T. R., 468.

Blackstone shows that consent of all parties having remote interest should be obtained.

Smith's Comment., sec. 816.
2 Bl. C., 345.

Private statutes do not bind strangers, unless ~~it has~~ they have a clause to that effect.

Smith's C., sec, 817.
2 Bl. Com., 345.
4 Cruise's Dig., 519.
Jackson vs. Collin, 2 J. R., 263.
8 Coke's R., 275, Barrington's case.
8 J. Report, 388.
4 Mass., 140.
1 T. R., [illegible]

Jackson vs. Colvin, 2 J. R., 265.
8 Coke's R., 275, Barrington's case.
8 J. Report, 388.
4 Mass., 140.
1 T. R., 93.

6

In this case no party representing the Inheritance was privy to the Private act nor were the trustees or their Representatives under the deed of 1793 consulted. Peter Gordon was not a substituted Trustee tho' falsely asserted to be such

But it was decided in Wesley vs. Keenan, 2 Ambl., 697, that a private act passed to enable a tenant in tail, to raise money out of the entailed estate, bound the issue in tail and the remainder, because tenant in tail could have effected the same object by a common recovery.

In New Jersey, the tenant tail cannot bar his issue, and he has no power to alienate but during his life—nor was there, according to our construction, any person before the Legislature, representing any estate or interest, greater than a life interest.

See on this
Den vs. Van Ripper, 1 Harris' R., 11.

And see also, 4 H. and McH., 6, as to fraud in the obtention of a private act of the Legislature.

In New Jersey, the Legislature has no right to take A's property and give it to B.

Sax Ch. R., 694.

Nor could this private act change the estates as held under the old deed of 1793.

10 Md. Rep., 144.

We do not deny the power of the Legislature to abolish the entail, but we deny that they have so intended or expressed that intention by this act of legislation.

Nor will courts strain a private act, to make it divest the right of parties not uniting in the obtention of the act.

NINTH POINT.

WE MUST RECOVER EVEN IF MARY CROXALL WAS FIRST TENANT IN TAIL.

But suppose we are wrong in our original position that Thomas Croxall was the first tenant in tail under the true construction of the deed of 1793, then we maintain that the repealing act of 1820, so far as deeds were involved, only repealed the restrictions of the act of 1784, and the estate tail descended in 1824 on Thomas Croxall as the second tenant in tail, and was not convorted into a fee simple because the act which so converted it was then repealed.

Admitting the application of the rule in Shelly's case, then Mary Croxall, the ancestor, took an estate tail, and the estate being limited to the heirs of

her body begotten by her husband, Charles Croxall, (independent of any statute of New Jersey regulating the descent.) Thomas Croxall, who was the only child of Mary and her husband, on the determination of her estate became second tenant in tail.

Was there any statute of New Jersey which regulated or changed the descent? If none such, then the estate descended to Thomas Croxall as tenant in tail, and at his death to Robert Morris Croxall, the son of Thomas, who now claims performam doni.

On the 15th of November, 1793, the statute of 1784 was in existence.—This act did not *abolish* estates tail. It only *limited* such estates. It declared that all entailments should terminate with the life of the first donee in tail.

What operation has this statute upon the entailment in question? Upon the execution of the deed on the 15th of November, 1793, according to the rule in Shelly's case, the possession was executed in Mary Croxall, the ancestor. She then was the first donee in tail. If she had died while the statute of 1784 was in existence, then that statute, at her death, would have put an end to the entailment, and cast the inheritance upon the heir of her body, &c. Thomas Croxall, free from the entailment. Thomas would then have been seized of an estate in fee simple by virtue of the statute. The statute would have enlarged his estate from a fee tail to a fee simple.

But Mary Croxall, the first donee in tail, did not die while the statute of 1784 was in existence. In 1820 the statute of 1784, so far as it affected entailments by deed, was repealed. Mary Croxall died in 1824. At her death there was no statute in existence in New Jersey which enlarged an estate tail into a fee simple. There was no statute in existence which regulated the descent of such an estate or affected its character. The act of 1820 repealed the act of 1784, and declared the character and effect of conveyances and devises which should be made *from and after* the passing of the act. When Mary Croxall died in 1824, *eo instanti* at her death the inheritance was cast upon her son Thomas. He took the inheritance as her heir at law *per formam doni*. What inheritance did he take? He did not take a fee simple, for the statute of 1784 was repealed. He must necessarily have taken an inheritance according to the law of New Jersey then existing by which such estates were regulated. That law was the common law of England as it existed at the time the deed in question was made, and as it existed at the time the inheritance was cast upon Thomas at the death of his mother, Mary Croxall. Thomas Croxall then took an estate tail. There was no other estate known to the law which he could take. There was no *statute* of New Jersey declaring what estate he took. The law as it stood at the date of the deed made him tenant in tail. As such he could not alien the estate, and the deed made by him to Garrett D. Wall in 1825 was therefore void at his death.

This view of the case seems to us so plain that we cannot conceive by what argument the result can be avoided. It will be observed that Chief Justice Hornblower puts the case of an entail being in the hands of the first tenant in tail at the date of the repealing act of 1820, as one to be decided.

1 Harris R., p. 297.

Now this is our very case, supposing Mary Croxall to be the first tenant in tail. Chief Justice Hornblower inclined to think the repealing act would restore the entail after it had descended to the second tenant in tail and become a fee simple, but he waived his opinion on this point. See fully his able opinion,

1 Harris, R., p. 295–7.

We have already argued fully to show that the estate created by the deed of 1793, under the law as it then stood, was an estate tail. Conceding that it was an estate tail in Mary Croxall, under the rule in Shelley's case, it was also a vested estate in her, which she could not alienate by deed or bar by recovery, after the act of 1799, and all her deeds subsequently were nullities, except to pass title during her life.

This estate tail having lawfully vested in Mary Croxall in 1793, under the statute de donis as restricted by the act of 1784, could not be divested, but continued a vested entail in her, notwithstanding the repeal in 1799 of the stat. de donis. See opinion in case U. States vs. City of Quincy No. 90. Dec. Term, 1866, of this Court

It was still an entail in her in 1820. And now the great question arises, did the simple repeal in 1820 of the act of 1784, destroy the estate tail which had lawfully vested in her in 1793, under the combined effect of the stat. de donis and the act of 1784? We confidently maintain that the estate tail which had existed for twenty-seven years in Mary Croxall, as a vested estate tail, was not abolished by the repeal in 1799 of the stat. de donis, and in 1820 of the act of 1784, because the transaction was consummate, and the estate tail vested in her.

What then was the effect of the repealing act of 1820? We answer that while it did not destroy the vested entail then in Mary, it released it in its future descent from the curtailing influences of the act of 1784, and passed the untouched entail to Thomas, as the next heir in tail, freed of the restraining influences of the act of 1784.

In other words, that the estate tail did not expire by its descent in 1824, to the second tenant in tail, as it would have done but for the repeal in 1820 of the act which limited its duration to that second descent.

The court will appreciate the distinction between abolishing a vested estate tail in 1820 by a simple repealing act, and regulating its future descent un-

trammelled by the act of 1784, which was palpably but an act to limit, not to establish estates tail.

Repealing the limit in 1820, left the estate tail which had lawfully vested in Mary Croxall in 1793, to descend in 1824 from her to the next tenant in tail, the same as if the act of 1784 had never existed, and the estate had vested in 1793, under the statute de donis alone.

It is no legal objection to this result to say that this estate tail now exists, and will continue to exist from generation to generation, without any power to destroy it, until the Legislature shall supply a remedy.

Assuming that at the date of the private act for the partition of Belvidere, Mary Croxall was the first tenant in tail, or that she and her husband were joint tenants in tail, and as such participated in the procurement of said private act, then it would not be competent for them to rely on a private act of the Legislature authorizing them to sell or dispose of the entailed estate unless they had as such tenants in tail, the right to bar the issue in tail by common recovery or otherwise.

Such was the clear principle of the decision of Lord Apsley in Ambler Rep., 698.

In that case, it is not denied that Parliament might prejudice or impair the rights of the issue in tail or remainder, if they chose to do so; but it is held by us that the rights of third parties are always saved from the effect of private acts of Parliament, even in the absence of a saving clause, but no such saving will be allowed where the parties obtaining the act had in themselves the power to bar the issue in remainder by common recovery.

Now, as the tenant in tail would have no such power in New Jersey, at the date of this private act, it follows that the rights of the issue are not to be prejudiced.

In conclusion, we have no doubt that the legal principles involved in this case, cannot be swerved from their moorings by any consideration of the fact, that a town has sprung up on part the property belonging to this plaintiff, under the terms of the recorded deed of 1793.

The defendant Sherrard has a warranty deed from Wall, and constructive notice by recording of the deed of 1793, and he improved under the title of parties holding limited interests under that deed, and which only expired in 1861, nor could the plaintiff enter or sue until 1861.

BRENT & MERRICK,

For Plaintiff in Error.

R. Johnson

it will be observed that this entail by deed in 1793. is not destroyed by the act of New Jersey to this date. See Dig. of 1820 & more Dig 1855 page 196.

CROXALL
vs.
SHERRARD.

SUPPLEMENTAL BRIEF OF
COUNSEL FOR PLAINTIFF IN ERROR.

In the deraignment of the title claimed by the defendant in error, we wish to add the following facts disclosed by the special verdict, to wit:

That the property held by Shrard was a portion of that allotted to Morris Croxall in the division of the Belvidere estate, on the 7th December, 1818.

Record, p. 21.

That on the 15th March, 182[illegible] a deed was executed by Thomas and Daniel Croxall and their wives, and by Claudius Legrand and Anna Maria his wife, (formerly Croxall,) purporting to convey to Morris Croxall all the land so allotted to him, in fee, so that none of the grantors or their heirs or assigns should have any claim, title, &c., thereto.

Record, p. 24–5.

At the date of this deed, none of the grantors had any vested interest, under the deed of 1793, and Thomas was only expectant heir of the contingent estate tail, limited by the deed; or if Mary Croxall, his mother, was first tenant in tail, he was still but the expectant heir in tail of the estate, limited to her, in its first descent from her.

Conceding, as contended in the brief of the defendant in error, and so ably maintained in the opinion Mr. Justice Grier, that this deed of ~~1793~~ 1824 worked an estoppel on any future title that Thomas Croxall might acquire.

See 11 How. 5, Judge Grier's opinion, p. 6.

It will then result that *instanti*, the title to the entail devolved on Thomas Croxall by the death of his mother on 6th July, 1824, it enured to

the benefit of *Morris Croxall* as his priograntee as fully by estoppel binding Thomas and his heirs, as if Thomas had granted the land after the estate had vested in him.

The case then stands the same as if Thomas had, after his acquisition of the title at the death of his mother, made a deed to Morris Croxall and his assigns. What would be the effect of such a deed? We confidently assert that it could only operate to pass the interest vested in Thomas Croxall as tenant in tail. It would be ~~vest~~ *pro tanto* as an assignment to Morris Croxall of the particular estate vested in Thomas as tenant in tail, but beyond this it has no legal effect upon the remainderman or the issue in tail claiming per formam doni.

3 H. & Mch., 409.
3 H. & J., 302.
1 Coxe, 193.

The covenants ~~mar~~ binded his heirs, but the deed even if a bargain & sale, would only pass his interest & not amount to a discontinuance of the issue in tail 2 Wendell 364-5

In this way Morris Croxall and his signs became, during the life of Thomas Croxall, seized as assignees of hinterest and no more, *quoad* the interests of the issue claiming "per formdoni" ~~on the 30th September, 1825~~. Morris Croxall assigns all his intest and title to Wall.

Record, p. 31.

On the 5th January, 1827, Wall assigns to Sherrard, who thereby became the lawful assignee of the precede estate tail vested in Thomas Croxall at the death of his mother, 6th Jr, 1824, and no more.

Record, p. 34.

Thus Sherrard's possession was lawfuand followed the deed of 1793, and was consistent with our title per form doni. His possession was our possession and no disseizin as held in

2 Denio, 22.
2 Southard, 711.
1 Chit. Gen. Pract., 747, &c
4 How., 295.
2 G. & J., 183.

Thomas Croxall was estopped by the deed from the grantor ~~from~~ ~~claiming~~ ~~title~~ ~~from~~ ~~the~~ ~~death~~ ~~of~~ ~~his~~ ~~mother~~ ~~in~~ ~~1824~~ ~~then~~ ~~in~~ ~~1827~~ ~~he~~ ~~sold~~ ~~and~~ ~~conveyed~~ ~~to~~ ~~his~~ ~~son~~ ~~and~~ ~~he~~ ~~in~~ ~~wall~~ who is protected by the the New Jersey Statutes 10 Wheat. 633-4 observed in 2 House of Lord Cases 811

But the entail vested in Thomas Croxall was subject to an outstanding life estate in his father, Charles Croxall, and this very property of Sherrard's was not possessed by Morris Croxall, but retained for the *use* of Charles and Mary Croxall, as shown in Record, p, 27. This life estate was conveyed on 30th September, 1825, by Charles Croxall, the surviving tenant, for life, to Wall.

Record, p. 32.

And this life estate passed by Wall's deed to Sherrard in 1827, as aforesaid.

Sherrard therefore was the assignee of both the life estate of Charles Croxall, who died in 1831, and of the tenancy of Thomas Croxall, who died in 1861.

His possession and title are thus derived from *Wall*, who was his grantor, and whose title is expressly recited on the face of his deeds, to depend on the deed of 1793.

If, then, Sherrard's possession was our possession, it is no more a case of adverse possession giving colour of title, than if he had been our tenant or bought from our tenant holding under a term of sixty or thirty years.

The act of limitations ~~of 1787~~ cannot be tortured to vest a title in a party who holds under the tenant's preceding estate, and no statement in the verdict that Sherrard brought from a person in possession supposed to have title, can neutralize the other facts found by the verdict, showing that he derived his title and possession under our deed of 1793, and that the very fact of his possession was a possession lawfully taken and held under the deed of 1793, and in strict conformity therewith, until 1861, when his paper titles expired, and he held over some two years before our suit;—that we, therefore, come within the proviso in the act of 1787, and this is no case of adverse possession.

See the 1st and 2d sec. of the Act of 5 June, 1787.
Pennington's Rep. 306, 340.
1 Spencer, 493.
Act 7 Feb 1799

Neither the recitals or the warranties in this chain of deeds can operate against this plaintiff, who does not claim as heir of the grantors in those deeds.

See Statute 17 June, 1799.

And so, on the other hand, let us see the effect of the special verdict, upon the hypothesis that the deeds of partition between the children of

Charles and Mary Croxall are but quit claims and releases, and do not pass any estate by estoppel or otherwise, because no estate was vested in any of them at that date.

Mary Croxall being as before shown invested with the life estate of her husband, Charles Croxall, by means of the conveyances made by the Gallahans and by Milnor, did on the 1 July, 1814, convey, together with her said husband, *one-half* of all the property described in the deed of 1793, to Thomas and Daniel Croxall.

Record, p. 11—14.

The effect of that deed was to make Thomas, Daniel and Mary Croxall tenants in common of the Belvidere estate, *per autervie*, that is during the life of Charles Croxall, who did not die until 1831.

On the 15 March, 1823, the half part belonging to Thomas and Daniel Croxall, "*per autervie*," passed by deed to Morris Croxall.

Record, p. 24.

This half part passed to Wall by the deed of Morris Croxall, dated 30 Sept. 1825.

Record, p. 31.

The other half part is found by the verdict to have been *reserved* (quoad the premises in dispute,) to Mary and Charles Croxall for their lives.

See Record, p. 26.

Charles Croxall, after the death of Mary, passed all his right to Wall on the 30 Sept. 1825.

Record, p. 32.

Thus, it will be seen that whether the deeds of partition are mere releases and quit claims, or matters of estoppel, the result is the same, and *quacunque via data*, Wall and his grantee, Sherrard, became tenants of the life estates under the deed 1793, and the life estate of Charles Croxall did not expire until 1831.

A silent holding over by Sherrard since 1831, would not be considered adverse.

4 How. 295.
2 G. and J., 183.

But Thomas Croxall, after he became tenant in tail, to wit, 19th May, 1825, by his deed to Wall, recites and ratifies the partition made between

him and his brothers and sister in 1818, by conveying to Wall his full allotment.

The effect of this ratification after the title had fallen on him, under the deed of 1793, was to enure to the benefit of his prior grantees, Morris Croxall, by the deed of 1823, to effect that partition.

Therefore, Wall, as the assignee of Morris Croxall, and Sherrard as assignee of Wall, became invested with Thomas Croxall's estate tail, which did not expire until 1861, and Sherrard's possession was under the deed of 1793, and was not made adverse by his belief or ignorance of his true title, to which he was remitted by operation of law. 2 Wendell 364-5 and 10 M & W 6[illegible]e 2 House of Lords cases 8 11

R. J. BRENT,
REVERDY JOHNSON.

Supreme Court of the United States.

John Den, on the demise of Robert M. Croxall, vs. John M. Sherrerd.	In error to the Circuit Court of the United States for New Jersey. In ejectment.

This action was brought by the plaintiff in error against the defendant in error for the recovery of a tract of land, parcel of a tract of 614 acres, called the Belvidere tract, all depending upon the same title, and on which is situated the town of Belvidere, the county seat of Warren county, New Jersey.

The entire tract, in 1793, was settled by Robert Morris, the American financier, upon his son-in-law and daughter, Charles and Mary Croxall, and their heirs of the body, by a deed bearing date November 15th, in that year, and set forth in the record, on pages 6, 7, and 8. The plaintiff in error is the eldest son of Thomas Croxall, (who was the eldest son of Charles and Mary Croxall,) and claims the land by right of primogeniture, under the entailment created by this deed.

The construction of the deed is one of the questions in the cause.

The defendant in error occupies the old homestead mansion of the Croxall family, which is the land in question in this cause, and is part of the 614-acre tract, and has occupied it for forty years past, claiming to be the owner thereof by a fair and bona fide purchase, made from one Garrett D. Wall, by deed dated January 5th, 1827, (which is set forth in the record, pp. 34, 35,) the said Wall being in possession at the time of the purchase,

and being supposed to have a legal right and title thereto. —(See p. 36, marginal page 70.) Wall obtained title in 1824 and 1825 by various deeds from Charles and Mary Croxall and their children, which are stated on pages 27 to 34 of the record, and paid full value for the property. —(See record, p. 34, marg. p. 67.)

The family history of the Croxalls, and the devolution of this property, between 1793 and 1825, out of which the title of the defendant and the other titles of Belvidere finally grew, were briefly as follows:

Charles and Mary Croxall had four children, Thomas, (the father of the plaintiff,) Daniel C., Anna Maria, (who married one Claudius F. Le Grand,) and Morris. The three eldest had become of full age prior to November, 1817. Morris, the youngest, became of full age in 1820. Prior to his coming of age, Peter Gordon was his duly constituted guardian.—(See record, p. 16.)

Prior to 1817 the life estate of Charles Croxall, by judgments, sheriff's sales, and otherwise, had become vested partly in Mary Croxall and partly in trustees in trust for her; and Charles and Mary had, in 1814, conveyed one undivided half of the lands to their sons, Thomas and Daniel.—(Record, pp. 11–14.)

In 1818 the Legislature of New Jersey, on the application of Thomas, the eldest son, and by the consent of Charles and Mary Croxall, and the younger children and the guardian of Morris, passed an act authorizing a division of the entire tract of 614 acres amongst the four children in fee simple, subject to an annuity of $500, to be paid by each child to the mother, Mary Croxall, as an equivalent for her and her husband's life estate. This division was made, and the family arrangement thus agreed upon and authorized by legislative enactment, was further carried out by mutual deeds of bargain, sale, and release by the several children to each other respectively, for their respective shares in fee simple, confirmed by Charles and Mary Croxall, and containing cov-

enants of non-claim, *i. e.*, that neither they nor their heirs should ever claim the shares released respectively. The premises in question fell in the share allotted to Morris Croxall, the youngest. The derivation of title thereto is as follows, viz:

1. The act of the legislature referred to, dated Feb. 4, 1818.—(Record, p. 19.)

2. The division made by the commissioners under this act, set out on pages 20, 21 of the record.

3. DEED from Thomas Croxall and wife, Daniel C. Croxall and wife, C. F. Le Grand and wife, to Morris Croxall in fee simple, for the share set off to Morris, including the premises in question, dated March 15th, 1823. —(Record, pp. 24, 25, 26.) This deed contains the covenant of *non-claim*.—(See p. 26. marg. 53.)

4. MORTGAGE given by Morris Croxall to Thomas Lomasson, dated March 19th, 1823, for $1,700—paid by Wall. —(See record, p. 30.)

5. DEED from Morris Croxall to Garret D. Wall, dated Sept. 30, 1825, for the share set off to Morris in fee simple, with full covenants and warranty, for the consideration of $6,000.—(See record, pp. 31, 32.)

6. DEED from Charles Croxall (after the death of Mary) to Garret D. Wall, dated Sept. 30th, 1825, releasing the entire 614 acres.—(See record, pp. 32–34.)

7. DEED from Garret D. Wall to John M. Sherrerd, the defendant in error, dated January 5, 1827, for the premises in question in this cause.

THE GROUNDS OF THE DEFENDANT'S CLAIM TO THE PROPERTY, AND OF HIS DEFENCE TO THIS ACTION, ARE—

I. That the deed of 1793, under the operation of the New Jersey statute of 1784 for limiting estates tail, and the rule in Shelley's case, conferred upon Mary Croxall (after her husband's life estate,) an equitable estate tail, subject to entailment during her life-time only, and con-

vertible, at her death, into a fee simple, in the heirs of her body.

II. That this entailment was liberated by the repeal of the statute *de donis* in 1799, (the estate being created by *deed* and not by *will*,) and the estate tail of Mary Croxall became a conditional fee.

III. That, at all events, the entailment imposed by the deed of 1793, was discharged, and the estate unfettered and converted into a fee simple, by the act of the legislature passed in 1818, and the proceedings and conveyances had and made under the same.

IV. That Thomas Croxall, the presumptive heir in tail as well as the other presumptive heirs of Mary Croxall, by the deed of March 15th, 1823, given by them to Morris Croxall, and by their treatment of the other shares, estopped themselves and their heirs from ever claiming the share set off to Morris, which includes the premises in question; and that on the death of Mary Croxall, July 6th, 1824, the fee simple which devolved to Thomas as her heir in tail, fed the estoppel and conferred upon Morris Croxall (whose estate the defendant has) a fee simple absolute.

V. That from that period, (July 6, 1824,) or at least from the death of Charles Croxall, November 6th, 1831, the premises have been held adversely as against Thomas Croxall and the other heirs and their privies, of whom the plaintiff in ejectment is one.

This action being commenced September 8th, 1863, (record, page 36,) the adverse possession continued uninterruptedly for nearly thirty-two years.

VI. That whether the possession has been adverse or not, and whether our construction of the deed of 1793 is correct or not, the defendant's case comes within the New Jersey Statute of Limitations, passed in 1787, by

which "thirty years' actual possession, * * * where 'such possession was obtained by a fair bona fide pur-'chase, * * of any person in possession, and supposed 'to have a legal right and title, * * shall be a good 'and sufficient bar to all prior locations, rights, titles, 'conveyances, or claims whatever, not followed by actual 'possession as aforesaid, and shall vest an absolute right 'and title in the actual possessor and occupier." * *

VII. That even if the plaintiff's construction of the deed be correct, namely, that the heirs of the body of Mary Croxall take by purchase, and not by descent, the case is still with the defendant: for—

1. If they do not take *as* heirs, but if the words "*heirs of the body*" are to be considered *descriptio personarum*, then they must be construed to mean the *children*, or *issue* of Mary Croxall by Charles Croxall; or, being in the plural, as *all the heirs of the body* of Mary by Charles; which would be, in effect, the same thing as *children*; for, by the law of descents of 1780, all the children, male and female, are made the heirs of any person dying after the date of that act. This would make all four of the children of Mary Croxall tenants in tail in common, or in coparcenary, and such tenants have a right to make partition, which will bind the subsequent heirs in tail. In such case, the heirs of Thomas cannot, under any construction of the estate, claim the share set off to Morris.

2. If Thomas alone, according to the plaintiff's construction, became the first donee in tail, and his son, the plaintiff, the first heir in tail, still the statute of limitations of 1787 would bar the heir in tail, as well as the heirs general, it being the intent of that statute to quiet titles against all outstanding claims, except those specially excepted.

VIII. That the effect of the repeal of the statute *de donis*, in 1799, and the statute of 1784, in 1820, was to make the estate a conditional fee either in Mary Croxall,

or in her son Thomas; and, in either case, their alienation would convey a fee simple absolute.

I.

The deed of 1793, *under the operation of the act of* 1784, *and the rule in Shelley's case, conferred upon Mary Croxall an equitable estate tail, subject to the entailment during her life-time only, and convertible at her death into a fee simple in the heirs of her body.*

The position of the plaintiff is the contrary of this, namely: That Mary Croxall took only a life estate, and that the heirs of her body took a contingent remainder in fee tail as purchasers.

But we contend THAT MARY CROXALL TOOK AN ESTATE TAIL.

The deed is a deed of bargain and sale to trustees in fee simple. The entire use which resided in Robert Morris, the grantor, was absorbed or executed by the statute of uses in the creation of the legal estate in the trustees. The other uses declared are secondary uses, or trusts. Hence, all the limitations of the deed, except the primary one to the trustees, are limitations of equitable or trust estates.

These limitations are: 1st. To Charles Croxall for life; 2d. To Mary Croxall for life; 3d. To the trustees for the natural lives of Charles and Mary, to preserve contingent remainders; 4th. To the heirs of the body of Mary Croxall, by her present husband, and to the heirs of his, her, and their bodies; 5th. To the grantor, Robert Morris, his heirs and assigns.

We find here a limitation of a life interest to Mary Croxall, and a remainder to the heirs of her body by Charles Croxall. This, by the rule in Shelley's case, raises a fee tail special in her. It is almost identical with the case of Shelley found in 1 Coke's R., p. 93. Shelley's

case was by deed, and limited the estate—1. To E. Shelley for life; 2. To trustees to preserve contingent remainders; 3. To the heirs male of the body of E. Shelley, and to the heirs male of their bodies.

It was like this case in the trustees to preserve contingent remainders, and in the limitation to the *heirs* of the *heirs*.

4 Cruise, title 32, chap. 22, sec. 4.

Archer's case, (1 Co. Rep., 66,) so much quoted by the plaintiff's counsel, was a case in which the limitation was first to A, then "*to his right and next heir male* and the heirs of his body." It comes within one of the settled exceptions to the rule in Shelley's case, namely: where the first limitation is to the "heir" in the singular number, followed by a secondary limitation to his heirs. —(See notes of Thomas & Fraser to Shelley's case, 1 Co. Rep., 262–4; also Fearne on Rem., 178, 1 Prest., 362.)

The limitation to the husband for life, then to the wife for life, then to the heirs of the body of the wife by the husband begotten, gives the wife an estate tail, so expressly decided.

8 Term Reports, 516, Alpass vs. Watkins.

There is no case or authority to the contrary of this. The dictum in some treatises are only seemingly against it; they say it leaves the *remainder in tail* in the wife; but no case or decision supports even this.

We admit that both estates must be of the same nature, that is, both legal or both equitable. In this case the life estate that unites with the remainder to form the estate tail is the life estate to Mary Croxall. The estate to the trustees to preserve remainders is not the estate; besides, that never did or could arise, no more than in Shelley's case. The life estate to Mary, and the limitation to the heirs of her body, are both uses upon a use; both are limited in the same deed and by the same words; in

neither are the trustees required to do anything that would make the legal estate necessary to be kept in them. We hold they are both trusts; but if we are wrong in our doctrine, then *both* are legal estates.

The rule in Shelley's case is adopted in New Jersey.

2 Pennington, 291, Den d. McGinnis vs. McPeake. 5 Dutcher, 185, Kennedy vs. Kennedy.

The rule in Shelley's case has, in the case of wills and *executory* trusts, been made to yield to the intention of the testator expressed in the will to give only a life estate.

2 Burrows, 2579, Perrin vs. Blake. (Reversed in Exchequer Chamber.) Bagshaw vs. Spencer. 2 How., 56, Shriver's Lessee vs. Lynn.

But, in the case of *deeds* and *executed* trusts, this doctrine has been clearly settled the other way in England.

Perrin vs. Blake was reversed. 2 Bligh, 1, Jesson vs. Doe d. Wright. 4 Barn. and Cress, 610, Doe vs. Harvey. 3 Bos. and Puller, 620, Poole vs. Poole. 2 Jarman on Wills, 280. 2 Washburn on Real Property, 272, §14. 4 Kent Comm., 218. 5 Dutcher, 185, Kennedy vs. Kennedy.

There is no case on a deed which holds that in a deed the rule will be affected by the contrary intention appearing. Deeds are construed by the fixed meaning of words used.

2 How., 56, Shriver's Lessee vs. Lynn.

For further authorities, see—

2 Jarman on Wills, 241, 243, &c.
Lewin on Trusts, 140–146, ed. 1848.
4 Kent Com., 214, 219, 222, old ed.
6 Cruise's Dig., (by Greenleaf,) pp. 313–330, &c.
1 Southard's N. J. Rep., 301, Den vs. Laquear.
1 Pennington's Rep., 291, Den vs. McPeake.

Lewin on Trusts shows that the rule equally applies to equitable as to legal estates, *i. e.*, to such equitable estates as are *executed* trusts, where the limitations of the equitable interest are complete and final; "in the *executory* trust the limitations of the equitable interest are intended to serve only merely as minutes or instructions for perfecting the settlement at some future period."—(p. 144.) Of course, the trust in this case is an executed trust. Marriage articles drawn up, not as a solemn settlement, but as minutes of a settlement thereafter to be executed, are of the executory kind; and in these cases, as well as in wills, the court will diligently search out the intent. But in deeds and executed trusts the legal effect of the words alone will prevail.

This has been put at rest in New Jersey, by two recent decisions in the court of errors.

1. Court of Errors, June Term, 1860, Traphagen v. Adams. Chief Justice Whelpley's opinion, reversing Ross v. Adams. 4 Dutch, 160.

The case turned on this one point. The court unanimously concurred in this opinion:

"In the construction of a deed of conveyance, the question is not what estate did the grantor intend to pass, but what did he pass, by apt and proper words; if he has failed to use the proper words, no expression of intent nor amount of recital showing the intention, will supply the omission, although it may preserve the rights of the party under the covenant for further assurances, or in equity upon a bill to reform the deed."

"To adopt as a settled rule of interpretation that deeds are to be construed like wills according to the presumed intent of the parties making them, to be deduced from an examination of the whole instrument, would be dangerous, and in the last degree inexpedient. It is far better to adhere to the rigid rules established and firmly settled for centuries, than to open so wide a door for litigation, and render uncertain the title to land."

"The experience of courts in the construction of wills, is the difficulty in getting at the real intent of the party, where imperfectly expressed, or where he had none. The

doubt which always exists in such cases, whether the court has spelled out what the party meant, all combine to show the importance of adhering to the rule that the grantor of a deed must express his intent by the use of the necessary words of conveyance as they have been settled long ago, by judicial decision and the writings of the sages of law. Upon this point it is not safe to yield an inch. If that is done, the rule is effectually broken down. Where shall we stop if we start here?"

"I am utterly unprepared to overturn the common law as understood by Littleton, Coke, Sheppard, Cruise, Blackstone, Kent, and all the judges who have administered it for three centuries, to adopt the dogma that intention, not expression, is hereafter to be the guide in the construction of deeds. That would be as unwarrantable as dangerous."

2 Beasley. 168 Price v. Sisson.

The Chancellor holds that deeds must be construed by the legal import of their words, not the intention gathered from it.

The Court of Errors affirmed this decision in June Term, 1864. Chief Justice Beasley, in delivering the opinion of the court, says:

"It is said the intention could not have been to distribute the property equally between the son and the descendants of the son. But we can not legitimately know any thing of the intention except from the language of the deed, and even if the intention were certain it could not limit the effect of a term of clear signification. If the terms used were doubtful, then the intent of the parties would become material. But the words of a deed cannot be contracted or distorted from their full and proper signification, although the court might be satisfied that such words have been employed ignorantly, or by inadvertence, and express a meaning different from that intended. The word 'issue' clearly means grand children; and, as the intent must be ascertained from the language employed, we are bound to consider that it was intended to embrace descendants of the second as well as of the first degree. The word cannot be limited except by express words, or a necessary inference tantamount to express words."

OBJECTIONS.

Some of the objections made by the plaintiff to the application of the rule in Shelley's case, will now be more particularly examined. They are the following:

1st. That the manifest *intent* to the contrary, is shown by the superadded limitation to the *heirs* of the *heirs*. This objection has already been partially noticed. This circumstance existed in Shelley's case itself. The rule is, that where the superadded limitation is repugnant to the first limitation, *i. e.*, not running in the same line, it indicates that the first are words of purchase, but not otherwise.

2 Jarman on Wills, 200, [271.]
1 Fearne on Rem., 141, 142, old ed, p. 181 new ed.
1 Preston on Estates, 345, '6, '7.
1 South R., 301, Dem v. Laquear.

2d. That the contrary intent is manifest, from the interposition of an estate in the trustees, to preserve *contingent* remainders, showing that the estate limited to the heirs is a contingent remainder. This objection is expressly answered in the books. It is said by Justice Buller to be a legal and technical limitation, the peculiar language of conveyancers, and not sufficient to turn words of descent into words of purchase.—1 Preston on Est., 327, 364, 277. Hodgson vs. Ambrose, Doug., 337.

The case of Shelley itself was also one of this kind.

It may be added that it is no objection to the application of the rule in Shelley's case, that the limitation over to the heirs is a contingent remainder; for this is frequently the case, as shown by the books, without making the heirs purchasers.

See 1 Prest. Estates, 267, 331, 333.

3d. It is objected that the remainder to Mary Croxall for life is contingent. This cannot be contended with any reason. The words referred to, "in case she shall happen to survive, &c.," merely refer to the vesting in possession; and belong to a category of words frequently employed in that sense.—(See Fearne on Rem., Sec. VII. 1, pp. 216, 217, New Ed. Do Sec. X., 4, pp. 241, 242, &c.) "Expressions importing contingency often relate to the vesting in possession, * meaning no more than would be implied without them." (See, also, Cro. Jac. 415; Webb vs. Hearing; Cro. Eliz., 26.) X

Where the contingent words are occasioned by the carving out of a prior gift, it frequently happens that the terms in which the posterior gift is framed import contingency, and would, unconnected with, and unexplained by the prior gift, clearly postpone the vesting; but, in such connection, and thus explained, they do not postpone it. Thus, a devise to trustees, until A shall attain 21, and *if*, or *when*, he shall attain that age, then to him, in fee simple, gives A a vested fee simple.

1 Jarman on Wills, 733–740.
3 Rep., 19, Boraston's case.
1 Burr., 228, Goodtitle vs. Whitty.
1 Blackst., 519, Doe vs. Satterthwaite.
3 T. R., 41, Doe vs. Lee.
9 East., 400, Doe vs. Cundall.
6 Taunt., 213, Edwards vs. Symonds.
1 Maule and Sel., 692; 1 B. and C., 721; 7 Ad. and El., 636.

In Cro. Jac., 415, the words were, "if they, or either of them, should over live their mother and F., their brother, and his heirs, (of the body,) then they shall enjoy the same for life, remainder to J. R., &c." Yet the gift over vested.

In Pearsall vs. Simpson, 15 Ves., 29, a limitation over, *in case A should become entitled* to a prior gift, gave a vested interest.

X 1 Prest. Est. 72-4, 79-83, 85-6, 226, 313

In Massey vs. Hudson, 2 Merivale, 130, a gift to E, "in case E shall happen to survive testator's wife," for whose life a prior interest had been carved out, gave a vested interest.

In Vanderheyden vs. Crandoll, 2 Denio, 19, where a gift was to A, "from and after the decease of the first devisee," the words were held not to indicate the time when the remainder vested in interest, but when it vested in possession.

Referring to 3 M., and S., 32; S. C., 6 Price, 41.
14 East., 601, Doe vs. Moore.
25 Wend., 119, 140, Moore vs. Lyons.

4th. It is objected, that the estate for life given to Mary Croxall was a *trust* or merely *equitable estate*, and the remainder to the heirs of her body, a *legal estate*;—and, therefore, that the two estates cannot coalesce. We admit that if the estates were of different natures, such a result would follow. But we deny that they are different. They are both equitable or trust estates.

The plaintiff's argument is, that the legal estate continues in the trustees only so long as may be necessary to fulfill the purposes of the trust; and that all further uses are executed by the statute of uses in the beneficiaries.

We admit the existence of such a rule, as applicable to certain cases. It is stated and explained in 2 Jarman on Wills, pp. 198–201.

But it will be found that this rule is applied only in cases where the uses are independent of the legal estate, and in a manner detached from it, and, therefore, at the *disposal* of the donor, whose intent, as to such disposition, will be collected from the whole instrument; and when it is apparent that he had no further object in keeping the uses separate and distinct from the legal estate, the court will consider them as executed and as drawing to themselves the legal estate under the statute

of uses. All the cases cited by the plaintiff's counsel were of this kind. They were either cases of *wills*, *feoffments*, or deeds of *lease and release*, or some other conveyances by which the bare legal estate could be conveyed without the aid of the use, thereby leaving the use at the subsequent disposal of the donor.

But in the case of a deed of *bargain and sale*, which the deed of 1793 is admitted to be, the use does not, and cannot remain detached from the legal estate, at the bargainor's disposal. The very *nature of the conveyance* is repugnant to such a state of things. The *bargain and sale* creates a use in the bargainee, to which the statute immediately attaches, and thus carries to the bargainee a legal estate. The use, therefore, is necessarily connected with, and is the only support of, the legal estate. Without this, the deed would not be a conveyance at all.

If uses are declared for the benefit of any other person than the bargainee, they are *uses upon uses*, and, therefore, mere trusts or equitable estates. The legal estate will stand in the bargainee alone; and although it may be presumed to be surrendered or reconveyed, if necessary to effectuate justice between parties, yet in construing the deed, it will be deemed to pass to the bargainee alone, and cannot be construed to pass to any other person.

This quality of the deed of bargain and sale will be found stated in the following authorities:

2 Saunders on Uses and Trusts, 62.
1 do. 135.
2 Preston on Conveyancing, 482.
4 Greenl. Cruise's Dig., 112, 139, Note.
1 do. 382, sect. 9, p. 381.
4 Kent's Commentaries, 301 old ed., 314 new ed.
Willard on Real Estate, 442.
16 Johns., 302, J. vs. Cary.
3 Johns., 388, J. vs. Myers.
10 Gill & Johns., 443, Matthews & Ward.

Preston's edit. of Shepherd's Touchstone, Law Lib., vol. 31, pp. 507, 510.

Co. Litt., 271 b.

In a case in Maryland, cited by plaintiff's counsel (3 Maryland Rep. 505,) where, under the circumstances of the case, the deed might be either a feoffment or a bargain and sale, the court were obliged to construe it to be a feoffment, before they could construe the declared uses as operating to convey a legal estate, thus admitting in the strongest manner the position for which we contend.

The deed of 1793 cannot be construed as a feoffment; it is admitted to be a bargain and sale only.

Therefore the legal estate in fee simple was given to the trustees, and all the secondary estates under it were uses upon uses, *i. e.*, trusts or equitable estates.

The fact that no use is expressly declared to the bargainee, makes no difference. It is the nature of the bargain and sale to raise the use in the bargainee, without express words.

If the absence of express words limiting the use to the bargainees would prevent the use from vesting in them, then the trustees took no estate at all by the deed of 1793, but the whole estate went to the *cestuis que use;* in which case *all* the secondary estates are legal ones, and, therefore, of the same nature. This view of the deed would operate in our favor equally as well as the other.

We further contend that the ACT OF AUG. 26, 1784, in force at the time of executing the deed of 1793, MADE THE ESTATE CREATED BY IT AN ENTAILMENT ONLY FOR THE LIFE OF MARY CROXALL; it *removed the restraining effect of the statute de donis after her death.*

The entailment or restraint on alienation was by force of the statute *de donis*; the statute of 1784 abolished that restraint after the life of Mary.

The act (*Paterson's Laws*, 53) was entitled "An act (to pass estates in fee by certain devises in wills and testaments and) to limit estates tail." For our purpose "An act to limit estates tail." It enacted—

"That all devises heretofore made in tail, as aforesaid, which have not already passed through one descent since the death of the testator, and also all such devises which shall hereafter be made in tail of any kind, shall be deemed, taken, and adjudged to vest in and entitle the person to whom the same may descend agreeably to the devise or entailment after the decease of the first devisee, to all the estate in the devised premises which the testator was entitled to and might or could have devised; *and that no entailment of any lands or other real estate shall continue to entail the same, in any case whatever, longer than the life of the person to whom the same hath been or shall be first given or devised by such entailment.*"

This act, so far as deeds were concerned, had no positive words *giving* any estate, either during or after the life of the first taker. It was only negative; it simply declared that no entailment should continue longer than the life of the first taker—after that it loosed the estate from the effect of the statute *de donis*.

The repeal of this act, in 1820, could only restore the effect of the statute *de donis* on such estates, and this it might have done, had not the statute *de donis* itself been repealed in 1799.

II.

The entailment by the deed of 1793 *was entirely liberated by the repeal of the statute de donis in* 1799, (*the estate being by deed and not by will,*) *and the estate of Mary Croxall became a conditional fee.*

The act of June 13, 1799, abolishing all British statutes, abrogated the statute de donis and with it the only foun-

dation for estates tail by deed, and left the act of 1784, preserving them in a limited form,—the only ground of entail by devises.

The first constitution of New Jersey, 1776, provides in article XXII.—

"That the Common Law of England, as well as so much of the Statute Laws as have been heretofore practiced in this colony, shall still remain in force until they shall be altered by a future law of the legislature."

The 4th section of the act of June 13, 1799, Pat. Laws, 436, enacts—

"That from and after the passing of this act, no statute or act of the Parliament of England or of Great Britain shall have force or authority within this state, or be considered as a law thereof."

By this abrogation the statute *de donis* and the entailments or restraints on alienation arising from it, fell to the ground in New Jersey, and the estate of Mary Croxall relieved from these restraints was a conditional fee at common law, and the condition having been performed by her having children, she had a fee simple alienable, which at her death, if not aliened, would *descend* to and *be inherited* by the special heir designated in the deed.

The statute de donis was not revived by the act of 1820 repealing the act of 1784. There is nothing in the words of the act to revive it, or in any rule of construction of statutes. The policy of the legislature, or any supposed intention on their part, does not call for the revival of that act so contrary to the genius of our institutions, and the whole course of our legislation. Fines and recoveries, the only thing that made estates tail tolerable anywhere, were abolished in 1799 with the statute de donis; and judicial construction cannot now revive this odious statute, contrary to the express words of the acts abrogating it.

There is nothing in the decisions of the courts of New Jersey to found this position upon. The only support is the reasoning of Chief Justice Hornblower, in Den vs. Dubois, overruled by his own decision concurring with his associates.

All other decisions speak of estates tail being upheld after 1799 by the act of 1784 until repealed.

2 Penn., 819, Den d. Crane v. Fogg. 2 South., 689, Den d. Young v. Robinson. 5 Halst., 39, Den. v. Fox. 3 Green, 276, Den d. McMurtrie v. McMurtrie. 1 Harr., 172, Den d. Spachius v. Spachius. 1 Harr., 285, Den d. James v. Dubois.

It was the opinion of the ablest lawyers of New Jersey that the repeal of the statute de donis, and of the act of 1784, converted estates tail into conditional fees.

4 Griffith's Law Reg., 1260–3. This author is always quoted with great respect in New Jersey. See 3 Zab., 622.

The fee conditional at common law depended for its continuance upon the grantee having issue, or the special issue designated in it. Such issue once born vested him with the fee simple and power of alienation. If he did not alien it *descended* to his heirs according to the form of the gift, who *inherited* it; they took by descent, and not by purchase. Coke and Blackstone both use the words *descend* and *inherit* whenever they speak of it. If no issue, or issue died in the life of donee without his having aliened, it would revert. The condition or limitation did not alter the *fact* of descent, but only the *course of* descent.

Coke Litt., 19 a. 2 Black Comm., 110 and 111. 4 Kent, 12.

III.

By the act of the legislature passed in 1818, *and the proceedings, and conveyances had and made under the same, whether the preceding point is certainly taken or not, the entailment imposed by the deed of* 1793 *was discharged, and the estate unfettered and converted into a fee simple.*

The state of facts, at the time this law was passed, was as follows:

The life estate of Charles Croxall, by intermediate conveyances through the Gallahans, commencing in 1798, and by decree of the Court of Chancery of New Jersey, in a large portion of the property, had become vested in Mary Croxall in or about March, 1808, certain other parts being excepted.—(Record, pp. 10, 11.)

Judgments were also obtained against the said Charles in September and November, 1807, and all his right, title, and interest in the entire Belvidere estate were sold by the sheriff in May, 1808, and, by intermediate conveyances in the same month, were transferred to Aaron D. Woodruff, Peter Gordon, and Jonathan Rhea, as trustees in trust for Mary Croxall during her life, and after her death to enure to the heirs of the body of Mary Croxall by her husband, Charles Croxall, according to the deed of 1793. —(Record, pp. 14, 15, 16.)

Thomas Croxall was married in the year 1813; and on the 1st of July, 1814, Charles Croxall and Mary his wife conveyed to their two sons, Thomas and Daniel, one-half of all the lands, mills, and appurtenances of the Belvidere estate.—(Record, pp. 11–14.) Thomas and Daniel were each to give Mary Croxall $500 a year, in consideration of this deed.—(Record, p. 17, top.) Thomas had the grist-mill for his part, at $600, and Daniel the saw-mill, at $400.—(Record, p. 18, middle.) *It was the family understanding that the four children were entitled to equal parts of the estate, subject to the life estates of their parents.*—(Record, pp. 16, 17, 18.)

Under these circumstances, Thomas made the application for the law in question.

See his petition, (Record, pp. 16, 17.)
The remonstrance of the others, pp. 17, 18.
The withdrawal of opposition and consent to the act, p. 18.
The act, p. 18, 19.

The preamble sets out the deed of 1793 with substantial correctness. It recites that there were four children, three of whom were of full age, and the fourth a minor of eighteen years, who had chosen Peter Gordon as his guardian; that "the said children had set forth by memorial their earnest desire to have said estate divided into four equal shares, that each one may know his, and sell and improve the same;" and that Charles and Mary Croxall had given their full consent and approbation to the wishes of their said children, provided an annuity of $2,000 were secured to said Mary.

The act then appoints three commissioners to make an equal division of the lands, "and to assign to each of the said heirs, by lot or otherwise, his or her one-fourth part of the said premises, according to the divisions so made and marked."—(sec. 2.) The third section provides that the annuity of Mary Croxall shall be secured to her during her natural life, in such a manner as to be fully satisfactory to her and her trustee, Peter Gordon, to be signified by their quit-claims, before the heirs shall have a legal title or fee simple for any part of the estate.

The manifest intent of this statute is to abolish the entail, and to divide the property amongst all the children and heirs of Mary Croxall in fee simple.

This was the object sought by the petition.

This is the declared purpose of the mutual deeds of bargain, sale, and quit-claim which were executed for carrying out the statute, after the commissioners had made

the division directed by the act.—(See record, pp. 21, 22, &c.)

This statute, and the proceedings under it, were surely as valid and sufficient to effectuate the intent of the parties as any fine or recovery ever was.

If Mrs. Croxall had a conditional fee, there can be no doubt of the result. She being, in 1818, seized of a conditional fee simple, which she could alien, did agree and consent to the act of 1818, by which the property was divided in four equal shares, in fee, among her four children, and made the partition affected by and under that act binding, according to the intention of that act, which was to give each of her children an estate in fee in such child's share; and the words of the act, and the division under it, will be held by the court to have the effect intended by the act—to give each of the children a fee—even if by a different mode from that contemplated by the legislature. If not as a partition among tenants in common, as a donation by their mother—she could alien—she chose to alien in this manner.

Again, if Mary Croxall had only an estate tail, all the possible issue in tail being present and consenting to the act, as if vouched in a common recovery, there can be as little doubt that the statute, and the proceedings under it, effectually destroyed the estate tail.

And, again, if she had only an estate for life, and if Thomas (as the plaintiff contends) were really the tenant in tail, can there be any more doubt that this statutory adjustment and new limitation of the estate, with the consent and procurement of Thomas, was as valid and effectual as a fine or recovery could have been, to dock the entail, and convert it into a fee simple?

Certainly the legislature had power to do it. Nothing in the Constitution of the United States or of New Jersey prevented it. The heir of Thomas (the present plaintiff) was not in being. The estate was not destroyed. Only the course of its devolution was altered. The legislature

have a right to alter the course of descent, both of fee simple estates and fee tails. If they do not cause vested rights to be divested, they do not transcend their authority.

Sedgwick on Stat. and Const. Law., 408.
25 Conn., 94, Richardson vs. Muryson.

The case cited in plaintiff's brief of Wesley vs. Keenan, (2 Ambl., 697,) that a private act passed to enable a tenant in tail to raise money out of the entailed estate bound the issue in tail and the remainder, is an authority on this point. The plaintiff seeks to avoid the force of that decision, on the ground that the tenant in tail could have suffered a common recovery, and Mrs. Croxall could not. But if that is material, which we doubt, it must be remembered that when the estate was created in 1793, fines and recoveries were in force; and if the legislature afterwards abolished them, they could, with equal propriety, re-enact them, and make them applicable to the estate in question. So that Wesley vs. Keenan is an authority in point.

IV.

The deed made by Thomas Croxall and wife, and Daniel C. Croxall and wife, and C. F. Le Grand and Anna Maria, his wife, to Morris Croxall, March 15th, 1823, operates as an ESTOPPEL *against the grantors and their privies.*

Mary Croxall did not die until July 6th, 1824. Any estate which came to Thomas Croxall in the lands at her death, or at any time afterwards, went to the grantee, Morris Croxall, to feed the estoppel.

If Mary Croxall had a conditional fee, not disposed of by previous acts, that fee descended to Thomas Croxall and passed by the estoppel. As tenant of the conditional fee, he had capacity to convey and cut off his own heirs.

See 1 Cruise's Dig., 73, 74.
2 Preston on Estates, cap. 7, 8.

Bac. Abridg., tit. Estate Tail.
2 Blackstone's Com., 110, and notes.
4 Kent's Com., 10, 11, 12, &c.

If she had an estate tail under the act of 1784, the estate descended as a fee simple to Thomas, and passed by the estoppel.

If Thomas (as the plaintiff claims) took the estate tail on the death of his mother, as first donee in tail, all his interest (being the possession for life) passed by the estoppel; but, in that case, the estoppel would not bar the next heir in tail (the plaintiff) *unless*—

1. The heir received assets by descent equal in value; or,

2. He was barred by a collateral warranty.

We contend that if the act of 1818 did not of itself carry the fee simple, Mary Croxall had either a conditional fee or an estate tail; and therefore that Thomas succeeded, on her death, to a fee simple, and that this fee simple passed by the estoppel.

That the deed operated as an estoppel is clear.

a. The deed was a *bargain and sale* as well as a release. It acknowledges a pecuniary consideration, and has the words "*grant, remise, release,*" &c. These are words of conveyance as well as release. In 1 Stephens' Commentaries, 494, it is said: "No form of words is essential to the efficacy either of a bargain and sale, or of a covenant to stand seized. * * Where the use is raised upon a pecuniary consideration, the conveyance will be good as a bargain and sale, whatever the terms used. * * The rule which requires a bargain and sale to be founded on pecuniary consideration is held to be matter of form only, and sufficiently complied with if the conveyance *purport* to be so founded, and for this purpose any trivial sum may be inserted."

See also 2 Sand. on U. & Tr., 54, 59.

1 Greenleaf's Cruise, 381, 382.
4 do., 136, note.
10 Johnson R., 456, Jackson v. Fisk.
2 Washburn on Real Property, 619, 620.
Willard on Real Estate, 422, 442.

In New York words of release alone are deemed sufficient. In New Jersey some word of grant or conveyance is generally deemed requisite; though this is rather a professional tradition, than a judicial decision. The word "grant" or "convey" or "transfer" is sufficient, at all events.

b. The deed professes to convey the *land itself* in fee simple, and not merely the grantors' *right, title, and interest* therein. This is material on the question of estoppel.

c. It contains a covenant of *non-claim*, sometimes called the covenant of special warranty, in the usual form in which that covenant is expressed,—following the habendum, and commencing with the words, "so that neither I, nor my heirs, &c."

See Rawle on Covenants of Title, ed. 1860, p. 416 note. (Ed. 1852, p. 325, note.)

d. Such a covenant, in a deed professing to convey the land itself in fee, will operate by way of estoppel, or rebutter, to bar the grantor and his heirs, against claiming the land by virtue of any after acquired title.

Rawle on Covenants of Title, chap. IX. Ed. 1860.
[As to the covenant of non-claim, p. 414, &c., and notes.]
When only "right, title, and interest" is conveyed, p. 418.
Binds heirs, p. 427.
[An American doctrine, p. 441.]

2 Washb. on Real Prop., 471–474; 651.
2 Smith's Leading Cases, 624–626; 634–638, late Ed.
11 Howard Sup. Ct. R., 297, Van Rensselaer v. Kearney.

6 Cushing's R., 32, Gibb's v. Thayer.
8 Metcalf's R., 406, Newcomb v. Presbrey.
14 California, 472, Gee v. Moore.

And generally, on the effect of deeds by way of estoppel, in New Jersey, see—

5 Halst., 102, Den v. Vanness.
2 Green, 6, 7, Den v. Winans.
3 Wash. C. C. R., 546, Cooper v. Galbraith.
1 Zabriskie, 164–165, Gough v. Bell.
2 Dutcher, 580, 583, 587–589, Moore v. Rake.

The last case is one of general warranty, but adopts the same principles which, in all the books, give the effect of an estoppel, or at least a rebutter, to a special warranty.

Mr. Hare, in his notes to the Dutchess of Kingston's case, in 2 Smith's Leading Cases, pp. 634–638, new ed., (the old edition is entirely superseded on this point by the more elaborate note in the new,) contends that it is not any overruling efficacy in a technical warranty that creates the estoppel or rebutter; but the general intent of the deed, as derived from its entire terms, the covenants among the rest. In other words—if a man assumes to convey a fee simple estate in lands, and uses such language as amounts to a declaration that such is his intention—he shall not be received to contradict it.

Whatever may be the principles on which the doctrine is founded, it is a well-established doctrine.

e. It is said by the plaintiff's counsel that a deed of bargain and sale, or quit-claim only conveys such right as the grantor has. This is true of all deeds deriving their operation under the statute of uses; that is, so far as their efficacy merely *as such deeds* is concerned. But if the deed assumes to convey a certain estate in land, and if the grantor covenants to warrant the title, either as against all the world, or as against himself and his heirs, he shall not be received to say that he has no title. That is the very effect of the estoppel.

Rawle on Covenants, 407. Ed. 1860.
2 Washb. on Real Prop., 465, 651, 473–5.

f. The recitals in this deed are of the most decided character, and meet every requirement stated by Mr. Hare. I refer for them to the record, pp. 24, 25.

V.

From the death of Mary Croxall, July 6th, 1824, or at least from the death of Charles Croxall, November 6th, 1831, the premises have been held adversely as against Thomas Croxall and his heirs;—being 32 years, at least, before the commencement of this action.

This is a complete bar by virtue of the statute which requires real actions to be brought within 20 years after the title or cause of action has accrued.

Nixon's Digest, tit. Limitations.

The possession of the *defendant* has *always* been adverse as against Thomas Croxall. He took a deed from a person in possession claiming title in fee under Thomas, and has always claimed title in fee himself under that deed. This is adverse to Thomas's title. If A gives B a lease, B's title for the term is not adverse to A's title to the reversion—for both may subsist together. But if A gives B a deed in fee simple, B's title is adverse to any subsequent claims of A.

If, therefore, Thomas succeeded to the fee simple on the death of his mother, and to the fee simple in possession on the death of his father, either in consequence of her having a conditional fee, or a fee tail, he is barred by the 20 years statute by *adverse possession.*

VI.

The defendant's case is clearly within the 30 years act of 1787, under any construction of the deed of 1793, or of the estate arising under it.

The defendant obtained possession by a fair and bona fide purchase of the land in question, of a party in possession, and supposed to have a legal right and title thereto.—(Record, p. 36.) This fact brings the case precisely within the statute.

It is objected by the plaintiff that, according to his view, his right did not accrue until 1861, and the statute cannot run against him as heir in tail until his right accrues; that, although he takes as heir, he takes as donee, *per formam doni*, and not *under* or *from* his father, Thomas Croxall.

We contend that the 30 years act bars the heir in tail as well as the heir general.

The English statute of limitations, (21 James I., c. 16,) expressly required all writs of formedon in descender, remainder or reverter, to be sued within 20 years next after the title and cause of action first descended or fallen. It was contended that each heir in tail had his 20 years to bring his action. But this has been denied by the English courts, and by the courts of this country, in states where the same statute has been substantially re-enacted.

See Angell on Limitations, pp. 373–375, §§ 27, 28.

3 Cruise Dig., 84. Plowd., 374, Stowell vs. Zouch.

4 Taunt., 826, Cottrell vs. Dutton.

2 Strange, 1257, Lloyd vs. Vaughan.

5 B. & A., 215, Murray vs. E. India Co.

3 Brod. & Bing., 217, Tolson vs. Kay.

[7 Eng. Com. Law, 420.]

6 Mass. R., 328, Dow vs. Warren.

2 Gallison, 315, Inman vs. Barnes.

The remarks of Dallas, J., in Tolson vs. Kay, 7 Eng. Com. Law Rep. 420, are worthy of observation. Judge Story, in Inman vs. Barnes, 2 Gall., 315, took it to be well settled, that if the time limited has once begun to run against any tenant in tail it is a good bar, not only against him, but also against all persons claiming in the descent *per fermam doni* through him.

The Legislature of New Jersey did not adopt the English statute, as some other states did, but enacted a statute which we consider quite as broad in its scope. Mr. Justice Washington, in a New Jersey case, reported in 4 Washington, 16, Wright vs. Scott, held that the 30 years act applied to estates tail, and barred the issue in tail as well as the prior tenant in tail. "It is a clear principle of law," says he, "that in such a case it continues to run on, as well against the issue in tail, as against the tenant in tail against whom it commenced its operation."—(4 Wash., 24, 25.)

VII.

Though the plaintiff's construction of the deed of 1793 *were correct, namely, that the heirs of the body of Mary Croxall take by purchase and not by descent, the case would still be with the defendant, without invoking the statute of* 1818 *or the statute of limitations.*

For, if they do not take *as* heirs, but as persons answering the description, the words "*heirs of the body*" must be considered as meaning the "issue" or "children" of Mary Croxall. This construction would be aided by the fact that in 1780 the common law course of descents was altered in New Jersey, and *all* the children, male and female, were made the heirs of persons dying seized of estates in fee simple.

2 Jarman 277
293

See 1 Preston on Estates, 369, 376, 287.
Tudor's Lead. Cas. on Real Prop., 493–495.

This construction would make all the children tenants in tail in remainder, and they would have a perfect right to make partition, as they did.

For authority as to the power of tenants in tail, in common, or in joint-tenancy, or co-parcenary, to make a partition binding on the heirs, see—

Co. Littleton, 166 (a), 170 (a), 173 (b).

2 Cruise's Dig., 463, old ed.
1 Thomas's Co. Litt., 692, 709.

From these authorities it appears that by the common law co-parcenary took place and partition lay between tenants in tail as well as tenants in fee simple, which partition was binding on the heir in tail, if equal. [In this case the equality of the partition will be presumed.] The statutes of partition extend the remedy to estates in joint-tenancy and tenancy in common, and apply to all estates of inheritance.—(Nix. Dig., title Partition, 31 Hen. 8, c. 1. See 1 Green's Rep., 271, Stevens vs. Enders.)

It thus appears that partition may be made by tenants in tail. Of course they should be tenants in possession, for partition is a division of the possession. If not tenants in possession, legislative action is necessary to enable them to make partition of an expectant estate. With such action, and the consent of the particular tenant, the power to divide lands between remainder men or reversioners is undisputable.

In this case, a special statute was required, because the children were not all tenants in possession, until after the partition was made, though Thomas and Daniel *were* in possession. The statute removed the difficulty, and authorized the partition without their being all in possession, to which the mother consented. When made, therefore, it had the usual effect, and was binding on the heirs in tail.

Therefore, if the "heirs of the body" of Mrs. Croxall (and not she herself) were, as contended by plaintiff, the first tenants in tail, they could nevertheless make partition, which they did do, and the plaintiff, as the heir in tail of Thomas, would be bound to resort to the share set off to him, and would have no claim to the premises in question.

the phrase "heirs of the body" of Mary Croxall, would be construed in its popular instead of its legal sense, and indicate her "children," "issue," or "descendants." They would take as *purchasers*, and not by *descent*. It could not, in that case, be contended that the words denote the *heir in tail*—or oldest son—for the hypothesis repudiates such a construction, and demands that they shall be read as words of purchase instead of descent. Hence, the construction would be governed by the same rules which are applicable to wills since the passage of the act of 1820, which declares that, thereafter, when lands are devised to one for life, remainder to his heirs, &c., in such case, after the death of the devisee for life, the lands shall go to, and be vested in his children equally.

Rev. Laws 1820, *p.* 774.

The Court of Errors has decided that such a devise gives to the children of tenant for life a *vested remainder* in fee, notwithstanding the changes by birth and death in the number; the estate opening and shutting to let in the newly born, and to shut out those who die before tenant for life.

2 *Zabriskie*, 599—*Demarest v. Hopper.*

According to the principles adopted in this case, if the words "heirs of the body" are to be taken as words of purchase, the children had a vested remainder in tail.

VIII.

The repeal of the act of 1784 *by the act of* 1820 *left estates tail created by deed without any support whatever, and they then became conditional fees, if they did not before.*

After the repeal of the statute *de donis*, in 1799, the act of 1784 was the only support of such estates.

Ford, J., in Den vs. Fox, (5 Halst., 40,) speaking of an estate tail which took effect by devise after the repeal of the English statutes, in answer to the objection that the statute *de donis* was repealed, and therefore no estates tail could be created, says: "But it must be remembered that 'we had a statute of our own, passed in 1784. * * 'This statute adopts the *great principle* of the statute *de* '*donis*, and supplies its place, as far as the legislature 'wished that great principle to remain. * * 'These estates could be as well made under our own act 'as under the statute of Edward; they both rested on the 'same great principle that the will of the donor should 'be observed; and in abolishing the English statute there 'was no intent to abolish the estates likewise, the princi-'ple of them being very valuable to a certain extent, and 'to that extent the legislature meant to support them."

In Den vs. Dubois, (1 Harrison, 285,) it was held that this statute extended to estated created by deed, as well as to those created by will.

Now, the repeal of this act could have no other effect, if it had any, than to restore estates created under it to conditional fees, as at common law. Estates created by devise are saved by the act of 1820, but nothing is said as to estates created by deed. If the repeal had the effect of converting estates created by deed into conditional fees, then, whether Thomas Croxall or his mother was the first donee in tail would make no difference. Thomas would hold the estate with full powers of alienation, after her death at all events; and the deed previously executed

by him would be effective by virtue of the estoppel to convey the estate to his grantee.

But the plaintiff contends that the repeal of the act of 1784 reduced the estate to the most strict entail under the old statute *de donis*, thus irretrievably fastening entails upon us, instead of abolishing them, as the legislature intended. This position is so absurd that we deem it unnecessary to examine it further. The great aim and object of the legislature to unfetter estates tail will be regarded as constituting the spirit of the act, and as furnishing the key to its construction.

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APPENDIX.

[*Extracts from New Jersey Laws.*]

By the Constitution of New Jersey, adopted July 2d, 1776, Article XXII., it was declared: "That the common law of England as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force until they shall be altered by a future law of the legislature."

The common law of descents was altered in 1780 so as to make inheritances descend to all the children of the deceased—to each son, two shares; to each daughter, one; and the same to brothers and sisters. In January, 1816, female heirs were made equal to male heirs.

(Paterson's Laws, p. 43.)

An act to pass estates in fee by certain devises in wills and testaments, and to limit estates tail.—(Paterson's N. J. Laws, pp. 83, 84, passed the 26th of August, 1784.)

SEC. 1. [Devise to A, without saying to his "heirs," shall carry a fee if no other disposition be made of the land.]

SEC. 2. *And be it enacted*, That all lands or other real estate which have heretofore been devised in tail of any kind, and hath agreeably to such devise or entail, passed through one descent since the death of the testator, and is now in the second or more remote descent from the testator; all such land or other real estate shall be deemed, taken, and adjudged to be the proper estate in fee simple of the present possessor, provided the testator under whom the same is held, had an absolute estate in the same, and also provided the person in possession holdeth the same in the line of descent mentioned and directed in and by such devise in tail: and all devises heretofore made in tail as aforesaid, which have not already passed through one descent since the death of

the testator, and also all such devises which shall hereafter be made in tail of any kind, shall be deemed, taken, and adjudged to vest in and entitle the person to whom the same may descend, agreeably to the devise or entailment, after the decease of the first devisee, to all the estate in the devised premises, which the testator was entitled to, and might or could have devised; and that no entailment of any lands, or other real estate, shall continue to entail the same, in any case whatever, longer than the life of the person to whom the same hath been or shall be first given or devised by such entailment.

An explanatory act passed March 23d, 1786, (Pat. Laws, p. 78,) declares that the words "passed through one descent" shall be construed to mean "been possessed by the first devisee in tail, and is now the property of the next devisee in tail;" and that the words "line of descent" shall be construed to mean "line of entailment."

An Act for the limitation of suits respecting titles to land, passed the 5th of June, 1787.

Whereas the laws now in force for the limitation of suits respecting real estates, are found insufficient to answer the good purposes of quieting claims and securing titles; therefore,

I. *Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same*, That sixty years actual possession of any lands, tenements or other real estate, uninterruptedly continued by occupancy, descent, conveyance or otherwise, in whatever way or manner such possession might have commenced or have been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements or other real estate, and shall be a good and sufficient bar to all claims that may be made, or actions commenced by any person or persons whatever, for the recovery of any such lands, tenements or other real estate.

II. *And be it further enacted*, That thirty years actual possession of any lands, tenements or other real estate, uninterruptedly continued as aforesaid, wherever such possession commenced, or is founded upon a proprietary right, duly laid thereon, and recorded in the surveyor-general's office of the division in which such location was made, or in the secretary's office, agreeably to law, or wherever such possession was obtained by a fair bona fide purchase of such lands, tenements or other real estate, of any person or persons whatever in possession, and supposed to have a legal right and title thereto, or of the agent or agents of such person or persons, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor and occupier of all such lands, tenements or other real estate: *Provided always*, That if any person or persons, having a right or title to lands, tenements or other real estate, shall, at the time of the said right or title first descended or accrued, be within the age of twenty-one years, *feme covert*, *non compos*, imprisoned, or without the United States of America, then such person or persons, and his and their heir and heirs, may, notwithstanding the aforesaid times are expired, be entitled to his or their action for the same, so as such person or persons, or his or their heirs, commence or sue forth his or their action within five years after his or their full age, discoverture, coming of sound mind, enlargement out of prison, or coming within any of the United States, and at no time after: *And provided also*, That any citizen or citizens of this or any other of the United States, and his or their heirs, having right or title to any lands, tenements or other real estate within this state, may, notwithstanding the aforesaid times are expired, commence his or their action for such lands, tenements or other real estate, at any time within five years next after the passing this act, and not afterwards.

An act to abolish fines and common recoveries was passed June 12th, 1799.

Pat. Laws, 411.

On the 13th of June, 1799, an act was passed relative to statutes, by which it was, amongst other things, enacted—

IV. "That from and after the passing of this act no statute or act of the Parliament of England or Great Britain shall have force or authority within this state, or be considered as a law thereof."

(Paterson's Laws, p. 436.)

An Act further regulating the descent of real estates, passed June 13th, 1820.

1. *Be it enacted*, That in case any lands, &c., shall hereafter be devised by the owners thereof to any person for life, and at the death of the person to whom the same shall so be devised for life, to go to his or her heirs or to his or her issue, or to the heirs of his or her body, then, and in such case, after the death of such devisee for life, the said lands, &c., shall go to, and be vested in, the children of such devisee, equally to be divided between them as tenants in common in fee; but if there be only one child, then to that one in fee; and if any child be dead, the part which would have come to him or her, shall go to his or her issue in like manner.

2. *And be it enacted*, That from and after the passing of this act, where any conveyance or devise shall be made whereby the grantee or devisee shall become seized in law or equity of such estate, in any lands or tenements, as under the statute of 13th of Edw. I., (called the statute of entails,) would have been held an estate in fee tail, every such conveyance or devise shall vest an estate for life only, in such grantee or devisee, who shall possess and have the same power over, and right in, such premises, and no other, as a tenant for life thereof would have by law; and upon the death of such grantee or devisee the said lands and tenements shall go to, and be vested in, the children of such grantee or devisee, equally to be divided between them as tenants in common in fee; but if there be only one child, then to that one in fee; and if any child be dead the part which would have come to him or her shall go to his or her issue in like manner: *Provided*,

That the widow of any such grantee or devisee of such estate shall have her dower in the premises in like manner as if the said grantee or devisee had died seized thereof in fee simple: *And provided also*, That where any person shall marry a woman being a grantee or devisee and seized of such estate, the said husband, after the death of his said wife, shall have his curtesy in the said lands and tenements, if there be issue of the marriage, in like manner as if said wife had died seized of an estate of inheritance in fee tail of the premises.

3. *And be it enacted*, That the second section of the act entitled "An act to pass estates in fee by certain devises in wills and testaments, and to limit estates in tail," passed the twenty-sixth of August, one thousand seven hundred and eighty-four, and the act entitled "An act to explain and amend an act entitled an act to pass estates in fee by certain devises in wills and testaments, and to limit estates in tail," passed the twenty-third of March, one thousand seven hundred and eighty-six, be, and the same are hereby, repealed: *Provided always*, That nothing in this section shall affect any estate now held by devise, but the same shall descend or be held as if this section had not been passed.

OPINION OF JUDGE GRIER.

In Circuit Court of United States for District of New Jersey.

Den ex dem Croxall
vs.
John M. Sherrerd.
} Special verdict.

It would be a tedious, as well as unprofitable, task to give a history of all the numerous deeds, mortgages, and judgments embraced in the special verdict in this case, or to notice the almost innumerable cases which have been referred to by counsel in the argument. My leisure will not permit me to write another exegesis on Shelly's case.

The case has been argued with much learning and ability by the learned counsel, and at considerable length. As few besides themselves would understand the argument, I shall content myself with stating certain propositions or results of a careful examination of this very peculiar case, without attempting to vindicate them by argument and quotation of authorities. I shall leave that task to the learned counsel, if the case should be hereafter reviewed in a higher tribunal, as I presume it will.

1. The first question in order is the construction of the deed of Robert Morris, dated 15th November, 1793.

It is a deed of bargain and sale for consideration acknowledged. Consequently, the trustees mentioned in the deed take the legal estate.

As a use cannot be limited on a use, the estates conferred on Mary Croxall for life, and the heirs of her body are trust estates.

The rule of Shelly's case applies, whether the estate be legal or equitable.

The act of 1784 modifies the statute *de donis* in the State of New Jersey.

The deed must be construed by reference to the existing law.

The estate given to Mary Croxall was therefore a vested remainder in fee tail special.—(Alpass vs. Watkins, 8 T. R., 516.)

The intention of the donor is that which is expressed by the terms used in their legal acceptation.

If we were allowed to conjecture or guess out an intention not expressed in legal terms, the only one probable is that which seems to have been given to it by Mrs. Croxall and her children, viz: That the donor intended to give the estate to the children, to be equally divided between them after the death of their father and mother.

The subsequent repeal of the statute *de donis* does not affect the estate, and, if it did, would only make it a conditional fee. The act of 1820, by its repeal of the act of 1784, has nothing to do with the case, as the estate given by the deed is to be construed by the law as it existed when the deed was made.

"When one statute is repealed by another, acts done in the meantime, while it is in force, shall endure and stand, and be good and effectual."—(Dwarris.) Den vs. Dubois, 1 Harrison, 298.

The speculations of Chief Justice Hornblower, in the case of Den vs. Dubois, are very ingenious; but the result being so absurd, he seemed frightened at it. The whole policy of the legislation of New Jersey has been to abolish estates tail; and the reasoning upon which it is asserted that they have ended in making them perpetual is too astute for practical purposes. The maxim of Seneca "Nil odiosius nimio acumine," applies to it with full force.

The interest of Mary Croxall was therefore an equitable estate in fee tail, which would have descended to her eldest son as an estate in fee simple, by virtue of the act of 1784, which was the law when the deed was executed.

2. We come now to the transactions, commencing in the year 1818.

Before this time the life estate of her husband had been transferred and vested in Mary Croxall, the mother. She had then four children, the youngest but twenty years of age. These were the heirs apparent of Mary Croxall. As they had all come to years of maturity, a family arrangement was desirable. A fine and recovery could not be resorted to, to bar the entail, as the legislature had repealed that process in 1799.

The mother was willing to transfer her life estate to her children, and desired the estate to be equally divided between them, so that each of them might have something in possession, instead of the contingent and uncertain future expectations. The eldest son was willing and desirous to waive his estate in expectancy, and divide equally with his brothers and sisters. In order to carry this family arrangement into execution, as a fine and recovery could not be resorted to, it was agreed to have recourse to legislative authority to enable these children and heirs apparent of the mother to take immediate possession of the estate, and divide it among themselves, each agreeing to pay to the mother an annuity of $500 per annum, as the consideration for the grant and release of her and her husband's life estate in the premises.

The Legislature of New Jersey, like the Parliament of England, exercised the right of passing private acts to relieve family estates from the complications consequent on marriage settlements and wills.

The parties interested were all present and consenting to the act. To give validity to this act and the intention of the parties, it must be considered to have the effect of a fine and recovery suffered by Mary Croxall, and vesting in her an estate in fee simple, which she might convey to her children for any consideration or none.

The plaintiff was not in existence at that time. The first heir in tail, who petitioned for the act, ought to be

as effectually barred as if vouched in a common recovery. That method of alienation was a judicial invention to destroy perpetuities. The legislature could exercise the same power, not only by general law, but by special act, and without the many legal fictions to give it effect which are necessary in a common recovery. This partition, made by legislative authority, had the effect of destroying the entail, and vesting an estate in fee simple in each of the children.

3. But, assuming the act of assembly to have given no peculiar effect in this partition per se, we shall next consider what is the effect of the deed or assurances mutually given by the parents and issue in tail. Without giving a history of all these several assurances, let us examine the deed of Thomas Croxall and his brother and sister to Morris Croxall.

This deed is dated on the 15th day of March, 1823. It is given by parties in possession to another acknowledged to have a joint right of possession. It is therefore not a grant by one out of possession, which could not pass a future or contingent title, as might be done by feoffment with livery in seizin.

An estate merely contingent, although it might be released to a privy, could not in any way, by mere writing under seal, be conveyed to a stranger.—(Fearne on Rem. 366.) In this case the release is not to a stranger, but to one of the issue in remainder, in possession by a previous grant of the freehold by the tenants for life.

It may be true, also, that a mere release of an heir in tail during the life of his ancestor would not conclude or estop him from subsequently recovering the land in opposition to its intent. In Lampet's case, (10 Coke, 48,) it was held that an executory devisee of a term might be released to the devisee for life, and would give him an absolute estate in the whole, although such release to a stranger would undoubtedly be bad.

It is true that in general a grant or release by one having no title would not estop him from claiming under a future title. But, as the mother did not die till the year 1824, and Thomas, the eldest son, had not yet become owner under the entailment, the question arises whether he is not estopped, and his heir after him, by virtue of the recital and covenants in his deed.

"The doctrine of estoppels once tortured into a variety of absurd refinements, is now almost reduced to consonancy with rules of common sense and justice."

Although the term "warrant" is not used in the covenants of this deed, yet there is no magic in the phrase which makes it absolutely necessary to an estoppel of privies. Without reference to the very numerous and irreconcilable cases on the subject, it may be stated as the true result of them "that it is not any overruling efficacy in a technical warranty that creates the estoppel or rebutter; but the general interest of the deed as derived from the entire terms, the covenants among the rest."—(See Hares' note to Duchess of Kingston's case; 2 Smith's Leading Cases.)

In the case of Van Rensselaer vs. Kearney, (11 How., 325,) Mr. Justice Nelson, in delivering the opinion of the court, after a review of the cases on the subject, states the result as follows: "The principle deducible from these 'authorities seems to be that whatever may be the form 'or nature of the conveyance used to pass real property, 'if the grantor sets forth on the face of the instrument 'by way of recital or averment that he is seized or pos-'sessed of a particular estate in the premises, and which 'estate the deed purports to convey, or what is the same 'thing, if the seizin or possession of a particular estate is 'affirmed in the deed, either in express terms or by neces-'sary implication, the grantor and all persons in privity 'with him shall be estopped from ever afterwards deny-'ing that he was so seized and possessed at the time he 'made the conveyance. The estoppel works upon the

'estate, and binds an after-acquired title as between the 'parties and privies. This doctrine is founded, when 'properly applied, upon the highest principles of morality, 'and recommends itself to the common sense and justice 'of every one," &c., &c.

The deed of 15th March, 1823, dated a year before the death of Mary Croxall, the mother, is made by three of the children (Thomas and wife being one of the parties) to Morris Croxall, the fourth and youngest son. It describes the parties "as children and heirs of Charles and Mary Croxall." It then recites the deed of Robert Morris of 15th November, 1793, as conveying to the trustees for the "use of Charles Croxall and Mary, his wife, and the heirs of their bodies, two certain tracts of land," &c. It then recites the act of assembly of 14th February, 1818, quotes the recital of the act, "That whereas the said Charles and Mary Croxall have set forth their earnest desire to have said estate divided into four equal shares, &c., that each may know his own and sell and improve the same," &c., &c. That the division was made by the commissioners, and a release by the tenants for life to Morris Croxall of their present interest in this portion of the estate.—(Record, p. 33.) It then recites that Thomas Croxall and wife, and the other parties of the first part, for the purpose of perfecting the said divisions according to the intent and meaning of the said act of the legislature, and for and in consideration of one dollar, &c., have granted, remised, released, and forever quit-claimed unto Morris Croxall, his heirs and assigns, all those lots, &c.," for the sole and only proper use and behoof of the said Morris Croxall, his heirs and assigns forever, so that neither they (parties of the first part) nor either, nor any of them, nor their nor either of their heirs or assigns, nor any other person for them or any of them, or in their or any of their names, right, or stead shall or will have, claim, challenge, or demand any estate, right, title, or interest of, in, or to the

said released premises or any part thereof, but from all and every such estate, right, title, claim, or demand of, in or to the said premises, they and every of them shall be utterly excluded and debarred by these presents forever."

This deed has been drawn with great care and skill; it leaves no room for misconstruction. The clear intention of all the parties to this deed and to the whole transaction was to vest in each of the children and heirs of Mrs. Croxall an estate in fee simple in the several parts assigned to each, and estop themselves and heirs from ever claiming any portion of the land so granted and released, and to forever estop their heirs from raising up the ghost of this entailment by some astute invocation of cases to be found stowed away in the lumber-garret of obsolete law.

This deed estops Thomas Croxall and his heirs from denying the power of the legislature to pass the act recited; that it was the intent of said act to put an end to the entail, and prevent the heirs of the body of Mary Croxall to have possession and seizin by a release of the freehold or life estate, and then divide the estate equally between them; and that the heirs, in pursuance of this legislative authority, have so divided the estate and mutually granted and released to each other all their present possession or any future claim of themselves or their respective heirs forever; and that each grantee should take a present estate in fee simple, discharged from all future claims under the entailment.

4. But assume that this deed operated only as a release of the interest which Thomas Croxall had at the time, and did not operate to convey his future estate, which became vested in him in 1824 by death of his mother.

Then we would have Morris Croxall in possession claiming adversely to Thomas Croxall from that date, and the property held peaceably by Morris and his assigns

for near forty years. If his estate tail vested in 1824, then his right of entry commenced at that date, and the statute of limitations would run against him and all claiming under him; or counting from the death of his father, more than thirty years of adverse possession was held by Sherrerd, the defendant.

But there is another statute of New Jersey which, after reciting that the laws now in force for the limitation of suits respecting real estates are found insufficient to answer the good purposes of *quieting claims and securing titles*, enacts, § 2, "That thirty years actual possession of any lands, &c., uninterruptedly continued, &c., where such possession was obtained by a fair bona fide purchase of such lands, &c., of any person or persons whatever in possession and *supposed to have a legal right and title thereto*, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances, or claims whatsoever not followed by actual possession, &c., and shall vest an absolute right and title in the actual possessor and occupier of all such lands, tenements, or other real estate." It has the usual exceptions in favor of infants, feme coverts, &c.

The defendants in this case have been in peaceable possession by a fair bona fide purchase from persons in possession and supposed to have a legal right and title to the lands sold. The case is within the letter and spirit of the act, and it is not within any of the exceptions.

This act is for the purpose of *quieting claims and securing titles*. It vests an absolute right and title in the actual possessor, and there is no case which has a more just right to invoke the protection of this law than the present. Let a verdict be entered for the defendant, and judgment thereon.

Per curia,

R. C. GRIER, *Cir. Judge.*

80 80 40 140.3 20 120.2" 40 80'1" 80'1"

BIBB'S COURT ST

STATE ST.

74 74 74 87 1/8 40 80 147 100 75 75 75

7 6 5 4 3 2

HARDIN AV.

MATHERS & NEWMAN

COLLEGE AV.

C. & A. FREIGHT

30 118

650'

LAFFAYETTE

51 50 49 48 47 46 45 44

36 37 38 39 40 41 42 43

97'-6"

47'-0

81'0"

SECOND ADDITION

P.P. & J.R.R.

REPAIR S.

DEPOT

EX

240

25 24 23 22 21 20 19

12 13 14 15 16 17 18

BIBB'S

NORTH ST

80 80 40 140.3 20 120.2" 40 80'1" 80'1"

180

177

BROWN ST

FIRST ADDITION

ILLINOIS AV.

P. P. & J. DEPOT

C. & A. FREIGHT

COURT ST

BIBB'S

180

20

180

60

EPLER

180

20

180

80

150

20

180

650'

OUT LOT 16

650'

LAFFAYETTE

INDEPENDENCE

60

180

20

180

EPLER

60

180

20

180

ERS & NEWMAN

5 200
4 75
3 75
2 75
1 135

20
40
165

ILL

30
178

C. B. & A. FREIGHT

1

INSTITUTION

JACK

Co

Filed July 24. 1875.

Wm H Brudell

177 180 76 115 60

ILLINOIS AV.

P. P. & J. R. R.

C. & A. FREIGHT

P. P. & J. DEPOT

20

240

EX

DEPOT

REPAIR S.

60

STITUTION FOR THE BLIND

T. W. & W. R. R.

ABNER YATES

ST.

JACKSONVILLE

Scale 60' to 1"

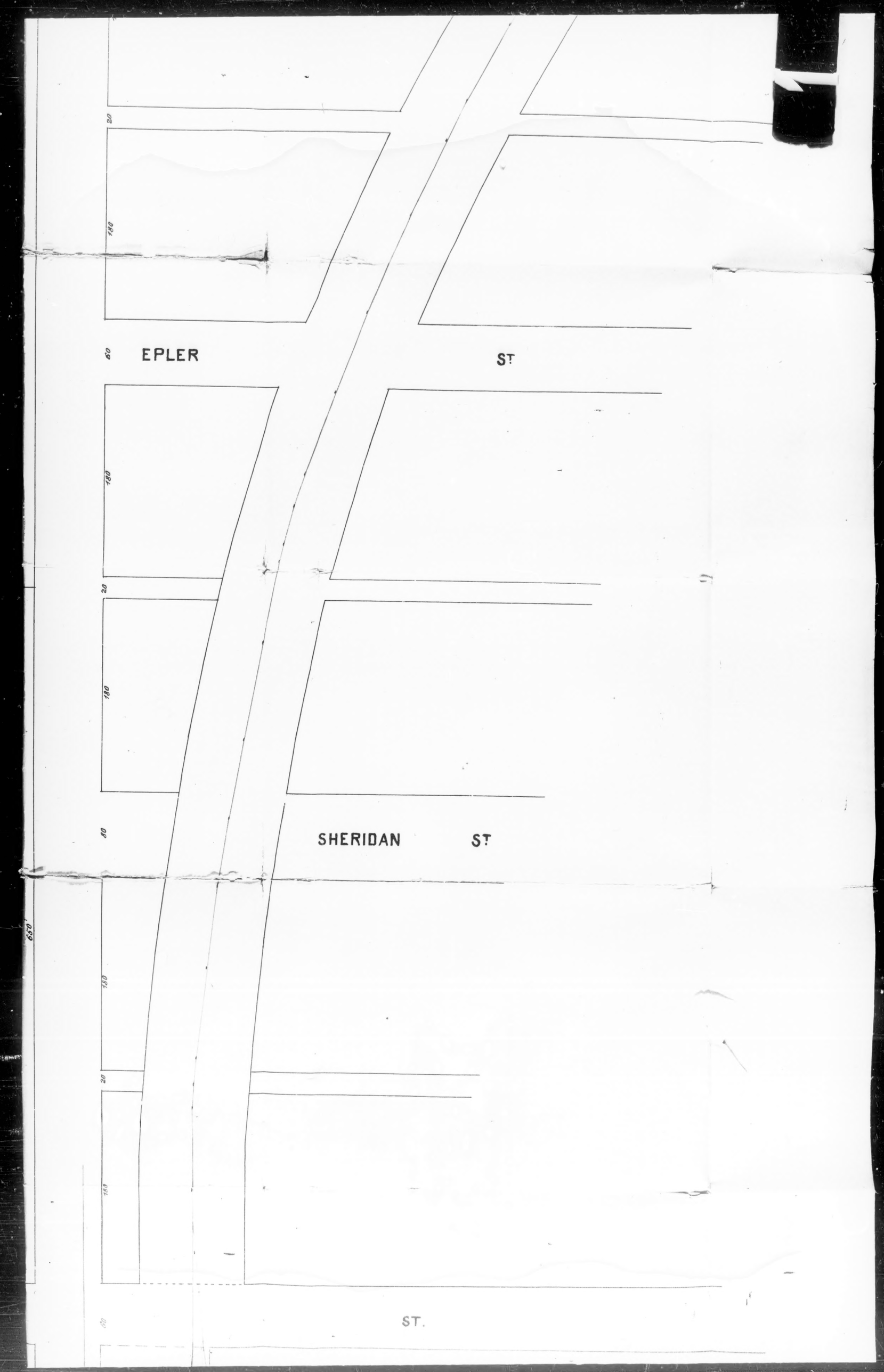
Complainants Exhibit

Map "W"

24. 1875.

Wm H Brielley clk

1


20
180
60
EPLER
ST
180
20
180
80
SHERIDAN
ST
650'
150
20
150
ST.

INDEPENDENCE

ST

60

180

20

180

EPLER

ST

60

180

20

180

Park

Row

Broadway

103.7

165.3

165.7

50.10

25.4

end of straight fence.

84.9

20.0

148.1

101.0

82.4

50.10

23.6

end of straight fence

No 227 Brig Volant Ad U.S. States page 90.

GULF OF MEXICO.

Preliminary Survey of the

ENTRANCE TO THE RIO GRANDE

From the U.S. Coast Survey

1854

Observatory Lat 25° 57' 22" N Long 97° 7' 36" W

Soundings in Feet.

Magnetic Variation 1861 nearly Stationary

Scale of 10 cables or 1 sea mile

0 1 2 3 4 5 6 7 8 9 10

Natural Scale $\frac{1}{240,000}$

Note - Tides

The mean rise at the mouth of the river is usually small and influenced by the wind. at Brazos Santiago, which is about 13 miles N. of Rio Grande, the tide ranges from 1 to 3¾ Feet

h.-hard s.-Soft bottom

TEXAS

MEXICO

Observatory

Bagdad

Schr. Jenny

Virginia

North Breakers

Volant

Dashing Wave

Bark Science

Division Line

Var.n 9°0

London, Published at the Admiralty Oct 24th 1861, under the superintendence of Capt Washington R.N F.R.S Hydrographer, Correction Oct /62

Sold by D.D.Potter agent for the Admiralty Charts 31 Poultry & 11 King St Tower Hill.